

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DONALD E WARNER**  
Claimant

**APPEAL NO. 08A-UI-03893-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 03/16/08 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated April 11, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 6, 2008. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Mr. Edward O'Brien, Attorney at Law and witnesses, Travis Smith and Chris Juni. Employer's Exhibits One through Four were received into evidence.

**ISSUES:**

The issues in this matter are whether the claimant quit for good cause attributable to the employer and whether the claimant is overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from May 14, 2007 until March 14, 2008 when he voluntarily quit by discontinuing to report for scheduled work. Mr. Warner was employed as a full-time forklift driver and was paid by the hour. His immediate supervisor was Tim Elliot.

Mr. Warner was separated from his employment with Jeld-Wen Inc. after he discontinued reporting for scheduled work. Mr. Warner last reported on March 14, 2008. The claimant did not report for scheduled work on Monday, March 17 and thereafter and provided no additional notification to the employer. After the claimant had failed to report for scheduled work for three or more consecutive days, the employer reasonably concluded that the claimant had chosen to voluntarily leave employment. Although the claimant was near termination for absenteeism, he had not been discharged when he chose to discontinue reporting for work on March 17, 2008.

## REASONING AND CONCLUSIONS OF LAW:

For reasons that follow the administrative law judge concludes that the claimant voluntarily quit employment under disqualifying conditions. The evidence in the record establishes that although Mr. Warner was close to being discharged for excessive absenteeism he had not been discharged when he failed to report for scheduled work on Monday, March 17, 2008 and did not provide any notification to the employer regarding his impending absence. Although scheduled to work, the claimant did not report for three or more consecutive workdays and the employer reasonably concluded that the claimant had chosen to voluntarily quit employment. In the absence of any evidence establishing that the claimant quit with good cause for reasons that were attributable to the employer, the administrative law judge must conclude that Mr. Warner quit employment under disqualifying conditions.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

For the reasons stated herein the administrative law judge concludes that the claimant voluntarily quit employment under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$589.00.

**DECISION:**

The representative's decision dated April 11, 2008, reference 01, is hereby reversed. The claimant voluntarily quit employment for reasons not attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that he is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$589.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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