

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEEGAN M BUCKLIN
Claimant

APPEAL NO. 12A-UI-04373-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN
Employer

OC: 02/19/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Keegan Bucklin, filed an appeal from a decision dated April 4, 2012, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 9, 2012. The claimant participated on his own behalf. The employer, Jeld-Wen did not provide a telephone number where a witness could be contacted and did not participate. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits..

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on April 4, 2012. The claimant did not receive the decision. He only learned of the disqualification when he had gone to his local Workforce Center on another matter April 17, 2012. He filed his appeal at that time.

Mr. Bucklin was employed by Jeld-Wen from October 4, 2011 until March 22, 2012 as a full-time assembler. He worked 4:30 p.m. until 1:30 a.m.

He had not received any warnings regarding absenteeism because he had not missed any work until Friday, March 16, 2012. He left work early that day because he had contracted the flu. He called in every day he was absent beginning Monday, March 19 through Thursday March 22, 2012. That same day the human resources manager, Liz, called him and said he had been fired for “missing too much work.”

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant filed the appeal as soon as he was informed a disqualification decision had been issued. His appeal of April 17, 2012, shall be accepted as timely.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be

considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The claimant maintains he had not missed any work since being hired until he was gone for several days in March. His contention he called in every day to report his absence has not been rebutted by the employer. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer has not met its burden of proof to rebut the claimant's testimony. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper supra*.

The claimant is not guilty of misconduct and disqualification may not be imposed.

DECISION:

The decision of the representative dated April 4, 2012, reference 03, is reversed. The appeal in this case shall be accepted as timely. Keegan Bucklin is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css