IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RYAN BROWN
Claimant

JELD WEN INC
Employer

APPEAL NO: 09A-UI-06787-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/07/08
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Jeld Wen, Inc. (employer) appealed an unemployment insurance decision dated April 21, 2009, reference 01, which held that Ryan Brown (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2009. The claimant participated in the hearing. The employer participated through Nicole Smith, Human Resources Manager; Mike Brummel, Management Trainer; and employer representative Pixie Allen. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time warehouse worker from December 28, 2005 through March 12, 2009. His last day of work was December 10, 2008 after which he chose to be laid off. The claimant returned for one day of work on December 17, 2008 and then returned to his voluntary lay off status. The employer placed all employees on a temporary lay-off from January 31, 2009 through March 1, 2009. The claimant returned to work on March 2, 2009.

The employer's policy provides that an employee will be discharged if the employee receives three warnings for safety violations within a five-year period. The claimant was discharged as a result of this policy. He received his first written warning on April 17, 2006 for improperly cleaning off wet glaze on a window sash. He positioned the chisel incorrectly and cut his hand. A second safety violation occurred on July 27, 2007 when he failed to wear safety toe shoes. Mike Brummel warned him three times on March 9, 2009 to wear hearing protection. There is a sign posted which advises all employees that hearing protection is required. Again on March 10, 2009 the claimant refused to wear his hearing protection and Mr. Brummel had to

again remind him at two different times. The claimant was at his work station on March 12, 2009 not wearing his hearing protection when Mr. Brummel called him to the office. He was subsequently discharged.

The issue of whether the claimant should have been eligible for unemployment benefits, when he voluntarily chose not to work from December 13, 2008 through January 31, 2009, has not yet been adjudicated.

The claimant filed a claim for unemployment insurance benefits effective December 7, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for his third written warning

for safety violations within a five-year period. The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. During the claimant's final week of work, he had been warned five times to wear hearing protection but continued to disregard this policy and was discharged after his sixth violation. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

The claimant voluntarily chose to become unemployed from December 13, 2008 through January 31, 2009 and this case is being remanded for further determination on his eligibility for benefits during that same time.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated April 21, 2009, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue, as well as, whether the claimant is eligible for benefits as a result of a voluntary lay-off.

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Susan D Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs