

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSH D POLLOCK**  
Claimant

**APPEAL NO. 07A-UI-03778-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 03/04/07 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism  
871 IAC 24.32(8) – Final Act of Misconduct

**STATEMENT OF THE CASE:**

Jeld-Wen, Inc., filed a timely appeal from an unemployment insurance decision dated April 2, 2007, reference 01, that allowed benefits to Josh D. Pollock. After due notice was issued, a telephone hearing was held May 4, 2007, with Mr. Pollock participating. Production Manager Troy Dillon and Human Resources Manager Scott Logan testified for the employer, which was represented by Edward O'Brien of TALX UC Express. Employer Exhibits One through Five were admitted into evidence.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Josh D. Pollock was employed by Jeld-Wen, Inc., from March 15, 2004, until he was discharged for excessive absenteeism on March 6, 2007. He last worked as a package line operator.

The final incident occurred on March 2, 2007. Mr. Pollock, who lives in a community 16 miles west of the worksite, elected not to report to work because of heavy snow. Approximately 12 inches of snow fell in the community in which he lives. Travel advisories were posted for the entire state. Non-essential travel was not recommended by the Iowa State Patrol.

Mr. Pollock had been absent on nine other occasions during the previous 12 months. Most of the absences were for personal illness, although some were for personal business.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in this record establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The final incident was Mr. Pollock's absence due to a snowstorm. While the employer's representative attempted to insinuate that the claimant conspired with co-workers, his attempts were rebuffed by his own witnesses. Neither employer witness contradicted the claimant's testimony concerning the snowfall level, the travel advisory, or the recommendation of the Iowa State Patrol.

The claimant argued that he felt he would risk his life if he were to try to report to work on March 2. The evidence persuades the administrative law judge that the claimant was not being unreasonable in electing to stay home. While the employer was justified under its policy to discharge Mr. Pollock, the legality of the discharge is not at issue in this hearing. The issue for this judge is whether the final incident leading to the decision to discharge was an act of misconduct. The administrative law judge concludes that it was not. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated April 2, 2007, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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