

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARRELL M MORRIS
Claimant

JELD-WEN INC
Employer

APPEAL 19A-UI-03231-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/31/19
Claimant: Appellant (5R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 15, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephonic hearing was held on May 7, 2019. The claimant, Darrell Morris, Sr., participated. The employer, Jeld-Wen, Inc., participated through Mark Shaw, HR Manager. Employer's Exhibits E1 through E7 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a production associate, from January 7, 2019, until March 22, 2019, when he was discharged for absenteeism.

Claimant's final absence occurred on March 21, 2019. Claimant was pulled over by the sheriff while he was driving to work. The sheriff ran a check on claimant's plates and discovered that claimant was driving on a suspended license. The sheriff then administered a field sobriety test. Claimant's breathalyzer test indicated he was intoxicated. The sheriff arrested claimant and took him to jail. Claimant was subsequently charged with both driving on a suspended license and operating a motor vehicle while intoxicated. When claimant reported to work the following day, he was discharged.

Claimant had several prior absences. On January 14, 2019, claimant missed a half-day of work due to personal illness. On February 12 and 13, 2019, claimant was absent due to car problems. On March 8, 2019, claimant was absent due to his wife's illness. Sometime in March, claimant had a conversation with Shaw about his attendance points. Claimant was incurring additional absences due to his wife's illness, and he was concerned about his

attendance points. Shaw told them they would work something out related to these absences. While the employer had informal conversations with claimant about his absences, claimant had not been issued a formal warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged from employment for excessive, unexcused absenteeism, but he may be otherwise disqualified from receiving benefits.

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.

Iowa Admin. Code r. 871-24.32(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. 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. Iowa Admin. Code r. 871-24.32(7) (emphasis added); see *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984) holding "rule [2]4.32(7)...accurately states the law."

The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins* at 192. Second, the absences must be unexcused. *Cosper* at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for "reasonable grounds," *Higgins* at 191, or because it was not "properly reported," holding excused absences are those "with appropriate notice." *Cosper* at 10. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187 (Iowa 1984).

An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. However, an employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work.

In this case, claimant's final absence occurred because he was arrested for driving with a suspended license and while under the influence of alcohol. This absence was the event that triggered his discharge from employment.

In July 2017, Iowa Code § 96.5(11) became effective. This code section specifically addresses separations due to incarceration. It states:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. Incarceration--disqualified.

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

- (1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.
- (2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.
- (3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.
- (4) The employer rejected the individual's offer of services.

b. A disqualification under this subsection shall continue 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.

This is the proper code section under which claimant's discharge from employment should be analyzed. However, this is not the code section under which claimant was denied benefits or upon which his appeal was based. Rather, the decision claimant appealed determined he was disqualified due to excessive, unexcused absenteeism. Claimant's final absence prior to March 21 occurred on March 8, 2019, when claimant was absent due to his wife's illness. Based on the testimony given by claimant considering his wife's serious medical condition, the administrative law judge finds this last absence was excused. Therefore, claimant is not disqualified from receiving benefits under § 96.5(2)a.

The issue of whether claimant is disqualified under Iowa Code § 96.5(11) is remanded to the Benefits Bureau for further investigation.

DECISION:

The April 15, 2019, (reference 01) unemployment insurance decision is modified with no change in effect. Claimant was not discharged from employment for disqualifying misconduct. A determination must be made as to whether claimant is otherwise disqualified from receiving benefits.

REMAND:

The issue of whether claimant is disqualified from receiving benefits under Iowa Code section 96.5(11) is remanded to the Benefits Bureau for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn