

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD D DEAKINS

Claimant

APPEAL NO: 08A-UI-01593-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC

Employer

**OC: 12/23/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

Jeld-Wen, Inc. (employer) appealed a representative's February 5, 2008 decision (reference 01) that concluded Donald D. Deakins (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 3, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Edward O'Brien, a representative with TALX, appeared on the employer's behalf. Scott Logan, the human resource manager, and Corey Worth, the group manager, testified on the employer's behalf. Jason Dillion observed the hearing. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 6, 2005. The claimant worked as a full-time forklift operator. On September 6, 2005, the claimant received a copy of the employer's attendance policy. The employer's attendance policy informs employees that if they accumulate more than eight unexcused attendance points within a 12-month period, they will be discharged. (Employer Exhibit Three.) The employer's attendance policy is a no-fault policy.

During the course of the claimant's employment, he was frequently absent from work. Many of these absences were covered under FMLA or occurred when the claimant was on short-term disability. (Employer Exhibit One.) On November 27, 2007, the claimant received a final written warning because he had accumulated over eight absences that were not covered under FMLA.

The warning indicated that any more absences could result in the claimant's termination. (Employer Exhibit Two.)

After November 27, the claimant did not have any more attendance issues until January 14, 2008, when he properly notified the employer he was unable to work as scheduled that day. The claimant reported to work as scheduled on January 15, 2008. The employer discharged the claimant on January 15, 2008, because he had more than eight absences in a 12-month period which violated the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established justifiable business reasons for discharging the claimant. Based on his attendance record, he was not a reliable employee. However, the facts show the claimant properly reported his absences and the claimant's absences were usually due to health-related issues. The evidence does not establish that the claimant intentionally or substantially failed to work as scheduled. Instead, he properly notified the employer that he was unable to work. While it is troublesome not knowing why the claimant did not work as scheduled on January 14, the pattern of the claimant's absences indicates he notified the employer when he was unable to work for medical reasons. Based on the nature of the claimant's previous absences and that he properly notified the employer he was unable to work, the evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of January 14, 2008, the claimant remains qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 5, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected misconduct. As of January 14, 2008, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs