

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE LAUTENBACH
Claimant

APPEAL NO. 07A-UI-02690-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 02-04-07 R: 02
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 6, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 3, 2007. The claimant participated in the hearing. Eric Pederson, Production Manager; Joel Linn, Group Manager; Scott Logan, Human Resources Manager; Bill O'Dell, General Manager; and Edward O'Brien, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time fork truck driver for Jeld-Wen from July 31, 2006 to February 6, 2007. The employer uses a point-based attendance policy whereby a full day absence is assessed one point; a tardy from one minute to one hour is one-half point; more than one hour late is one point; and leaving early is one point. Employees are allowed eight occurrences within a 12 month period and gain a point back if they have perfect attendance for three months. Absences must be pre-approved to be excused. The claimant was on an excused leave of absence from August 21 until October 2, 2006; he was absent due to illness October 24, 2006, and that absence was not excused so the claimant received one point; he was absent due to becoming a grandfather October 20, 2006, and the employer excused that absence; he called and asked for October 21, 2006, off to stay with his daughter and grandchild and was assessed one point; he was absent from November 28 through December 4, 2006, due to an infected tooth and received four points; the plant was shut down December 6, 2006, and his absence was excused; he had a pre-approved doctor's appointment December 8, 2007, and that was excused; he left early due to illness January 2, 2007, and received one point; and he called in and said his car would not start January 3, 2007, and received one point for a total

of nine points. On January 10, 2007, the employer issued the claimant a final written warning stating any other unexcused occurrence prior to April 3, 2007, would result in termination. On February 6, 2007, the claimant called and left a message saying he would not be in because his pipes were frozen. The employer called him back and reminded him of the final written warning and told him he needed to come in to work and the claimant said he would not be at work and was being treated unfairly. The claimant testified he was not given a verbal or written warning and the employer would not discuss the matter with him during his employment. The employer has an open door policy and testified it was nearly always available to speak with employees about warnings or about their points. The employer terminated the claimant's employment February 6, 2007, for exceeding the allowed number of attendance points.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). While many of the claimant's absences were due to illness, four of his nine allowed points, including the last two occurrences, were not excused and not due to illness. Although the claimant was not given a verbal or written warning, employees were expected to know how many points they had at any given time and it is not reasonable to believe the claimant had no knowledge of the attendance policy or open door policy except for what other employees told him or that he could not find one supervisor or human resources employee to ask about his points and/or warnings. Additionally, he did receive a final written warning and knew his job was in jeopardy. While the claimant's pipes may have frozen February 6, 2007, that did not require him to be present all day and night and miss work when he knew one more absence would result in termination. The employer has

established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The March 6, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as 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 claimant is overpaid benefits in the amount of \$1,744.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css