

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
<b>JOSEPH BABINAT</b> Claimant	<b>APPEAL NO. 13A-UI-06725-BT</b>
<b>JELD-WEN INC</b> Employer	<b>ADMINISTRATIVE LAW JUDGE DECISION</b>
	<b>OC: 05/12/13</b> <b>Claimant: Appellant (2)</b>

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

**STATEMENT OF THE CASE:**

Joseph Babinat (claimant) appealed an unemployment insurance decision dated May 31, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Jeld-Wen (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2013. The claimant participated in the hearing. The employer participated through Troy Dillion and Employer Representative Susan Chmelovsky. Employer's Exhibits One and Two were admitted into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 general laborer from April 29, 2013 through April 30, 2013. He previously worked at the employer's location through a temporary employment agency. The claimant was discharged for sleeping on the job on April 30, 2013. No previous warnings were issued. He had some medical problems which may have contributed to his sleeping on the job.

**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 discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 30, 2013 for sleeping on the job. No previous warnings were issued and he had medical issues which may have contributed to him sleeping. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

The employer is not a base period employer and its account is not subject to any charges during the claimant's current benefit year. If the claimant establishes a subsequent benefit year, the wage credits he earned from April 29, 2013 through April 30, 2013, would be subject to charge since the employer discharged him for non-disqualifying reasons.

**DECISION:**

The unemployment insurance decision dated May 31, 2013, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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