

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA PETERS

Claimant

APPEAL NO. 07A-UI-03484-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

Employer

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

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 27, 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 18, 2007. The claimant participated in the hearing. Mallory Russell, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four and Claimant's Exhibit A 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 advanced operator/line inspector for Electrolux Home Products from March 6, 1998 to March 7, 2007. The employer has a no-fault attendance policy and employees are discharged upon reaching ten points. The claimant was absent July 13 and 14, 2006, and received two points because her three-year old granddaughter was ill. She was absent July 25, 2006, and received another point. She was absent August 3, 2006, and received one point. She was absent August 25 and 28, 2006, because her granddaughter was ill and received two points. She was tardy September 25, 2006, and received one-half point. She was absent November 30, 2006, because of her granddaughter and received one point. She was listed as a no-report December 4, 2006, and received one point. She was four hours late because of snow January 15, 2007, and received one-half point. On March 2, 2007, the Governor declared a disaster day because of the weather and recommended that no one travel unless absolutely necessary so the claimant, who had taken the previous two days as vacation days because of the weather, called in and stated she would not be at work and the employer terminated her employment for accumulating ten attendance points.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Of the claimant's ten attendance points, at least five were due to the illness of her granddaughter and at least one other, the final absence, was due to weather so severe the Governor asked citizens not to travel. That leaves four other absences for which points were assessed. One of those points was given for two instances of tardiness leaving three additional unexcused absences between July 13, 2006 and March 2, 2007. Because the final absence was related to an unavoidable weather situation, no final or current incident of unexcused absenteeism has been established. Three unexcused absences and two tardies in eight months does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 27, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css