

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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ELECTROLUX HOME PRODUCTS INC
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C/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-04170-H2T
OC 03-14-04 R 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 5, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 5, 2004. The claimant did participate. The employer did participate through Casey Sciorrotta, Labor Relations Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an operator/production worker full time beginning November 10, 2003 through March 15, 2004 when he was discharged. The claimant sustained a back injury that caused him to seek medical attention on February 23, 2004. The claimant's physician

faxed a note to the employer on February 24, 2004 taking the claimant off work from February 20, 2004 through March 8, 2004. The employer knew that the claimant was off work per a doctor's orders as they admit that they received the doctor's note. The employer did not accept the doctor's note because it was not on the proper form. It is clear that the claimant sustained some type of injury which required he be off work. The employer knew the claimant was off work per doctors' orders. The claimant was not a no-call/no-show to work at any time, as the employer knew he was off due to a physicians order. When the claimant returned to work he was discharged on March 15, 2004 for being a no-call/no-show to work from February 25, 2004 through March 8, 2004.

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).

Because the final absence for which he was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

The claimant was absent from work due to a physicians order which the employer received. The employer cannot credibly claim that the claimant was a no call-no show to work as they knew he would be off due to the doctor's note they admit receiving. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 5, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjf