

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L ALEXANDER

Claimant

APPEAL NO. 08A-UI-06357-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

Employer

**OC: 06/01/08 R: 01
Claimant: Respondent (2R)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 24, 2008. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through Mary Gustafson and Dick Martin. Jeff Felts was not available to participate.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time housekeeper from September 30, 1997 until May 29, 2008 when she was discharged. Martin went to the plant to tell claimant and coworker Bill Evert at 4:35 p.m. or so to tell them since an outside contractor was going to be used on the night shift that they would start working days. Upon entry he saw her car in the parking lot. When Jeff Felts arrived at 4:50 p.m. and they could not find claimant and Evert on the premises, they did not see lights on in the plant and noticed claimant's car was gone out of the lot. Evert's car was not in the lot at all until later. The lights are on motion sensors and turn off after 15 minutes. They looked up their time records and found each had clocked in at 4:46 p.m. but there was no record of clocking out. Felts stayed and toured the plant every ten minutes and never found them. About 6:40 p.m. they returned and when confronted, denied leaving the plant. Both were fired for leaving the premises while on the clock.

The claimant has received unemployment benefits in the amount of \$1,435.00 since filing a claim with an effective date of June 1, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

An employer is entitled to expect its employees to report to work and work as scheduled. The employer has established that the claimant was clocked in while not working and while she was not on the premises. Furthermore, employer's evidence is credible that claimant lied about her behavior and whereabouts. The theft of time and deceit are both considered deliberate misconduct and are disqualifying. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The question of whether the claimant must repay these benefits is remanded to UIS Division.

DECISION:

The July 2, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,435.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs