

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R GEORGE

Claimant

APPEAL NO: 06A-UI-11275-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

Employer

**OC: 6/25/06 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. (employer) appealed a representative's November 14, 2006 decision (reference 06) that concluded James R. George (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be charged because the reasons for the claimant's employment separation were for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2006. The claimant participated in the hearing. Mallory Russell, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 2, 2006. Even though the claimant previously worked for the employer, he was hired as a probationary employee. Most recently, the employer hired the claimant to work as a full-time advanced operator. Brent Henderson was the claimant's supervisor. The claimant worked first shift until September 11, 2006. As of September 11, the employer transferred the claimant to another department where he was scheduled to work second shift. The claimant and his girlfriend asked Russell if they could work on the same shift because they only had one car. Russell understood the claimant wanted to be transferred to a first-shift job again because his girlfriend worked first shift. As a probationary employee, the employer placed the claimant in the department where the employer needed him the most.

The claimant did not work as scheduled on September 15, 22 and 29. The claimant did not notify the employer he was unable to work as scheduled these days. The claimant asserted he

did not work these Fridays because his co-workers harassed him by telling him to keep working if he wanted to keep his job and referred to the claimant as an old man. The claimant did not report this offensive behavior to the employer prior to October 3, 2006.

On October 3, the claimant talked to the union about problems he had with his co-workers. After working about 75 minutes on October 3, the employer informed the claimant he was discharged because he missed too much work during his probationary period. When the employer discharged the claimant, the union had not reported that the claimant felt harassed at work.

The claimant established a claim for unemployment insurance benefits during the week of June 25, 2006. He reopened his claim the week of October 8, 2006. The claimant filed claims for the weeks ending October 14 through December 2, 2006. The claimant received his maximum weekly benefit amount of \$152.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The fact the employer's records indicate the claimant received a paycheck for plus \$14.00 on October 15, supports the claimant's assertion that he worked 75 minutes on October 3. Although the employer asserted the claimant quit, a preponderance of the evidence indicates the employer initiated the separation and discharged the claimant on October 3, 2006.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant previously worked for the employer and the last time he worked he had been discharged for attendance issues. Therefore, the claimant knew or should have known his job would be in jeopardy if missed too much work during his probation. The claimant also knew the employer required him to notify the employer when he was unable to work as scheduled. The claimant's testimony that he missed work on each of these Fridays because his co-workers harassed him is not credible. First, the claimant's testimony that he called the employer on each of these days is not supported by the facts. Next, if the claimant was so distraught with his co-workers' comments it is hard to understand why he did not immediately notify the employer that he was being harassed or at least did not like the comments his co-workers directed toward him. The claimant's silence created attendance problems that again resulted in his discharge.

The claimant's repeated failure to work three consecutive Fridays without notifying the employer constitutes an intentional and substantial disregard of the standard of behavior the employer has a right to expect. The employer discharged the claimant for reasons constituting work-connected misconduct. As of October 8, 2006, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending October 14 through December 2, 2006. The claimant has been overpaid and must repay a total of \$1,216.00 in benefits he received these weeks.

DECISION:

The representative's November 14, 2006 decision (reference 06) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 8, 2006. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending October 14 through December 2, 2006. The claimant has been overpaid and must repay a total of \$1,216.00 in benefits he received for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs