

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

BRENT A PERKHISER
615 E 2ND ST
WEBSTER CITY IA 50595

ELECTROLUX HOME PRODUCTS INC
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 05A-UI-06952-CT
OC: 05/29/05 R: 01
Claimant: Respondent (1)

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 for Misconduct

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. filed an appeal from a representative's decision dated June 24, 2005, reference 01, which held that no disqualification would be imposed regarding Brent Perkhiser's separation from employment. After due notice was issued, a hearing was held by telephone on July 25, 2005. The employer participated by Mallory Russell, Human Resources Generalist. Mr. Perkhiser did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Perkhiser was employed by Electrolux Home Products, Inc. from February 22, 1983 until May 27, 2005. He was a full-time laborer. Mr. Perkhiser was discharged after he received five written warnings within a 12-month period. The final warning was on May 27, 2005 when he was away from his work area without permission. The length of time he was away is unknown. What reason he may have given for being away is also unknown. Employees are prohibited from leaving their work areas without permission unless there is some type of emergency.

Mr. Perkhiser's next most prior warning was on May 3, 2005 when he was smoking either in an unauthorized location or at an unauthorized time. He had received a warning for similar conduct on August 3, 2004. He received a warning on January 25, 2005 for being away from his work area. Mr. Perkhiser received a warning on September 24, 2004 because of unsatisfactory work. The specifics of his deficiencies are unknown. A grievance was filed concerning the discharge and Mr. Perkhiser has subsequently been reinstated to the employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Perkhiser was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). It is incumbent upon the employer to provide specific details concerning the reason for separation as mere allegations of misconduct are not sufficient to result in disqualification from benefits. See 871 IAC 24.32(4). Moreover, there must be a current act of misconduct to sustain a disqualification. See 871 IAC 24.32(8).

In the case at hand, the final incident that triggered Mr. Perkhiser's discharge was the fact that he was away from his workstation on May 27, 2005. The employer did not have information as to how long he was gone or what reason he gave for being gone. The evidence failed to establish that Mr. Perkhiser was away from his assigned workstation for a length of time sufficient to establish a substantial disregard for the employer's standards. The employer failed to establish that the conduct of May 27 constituted an act of deliberate and intentional misconduct. The next most prior act complained of by the employer was on May 3, 2005. This was not a current act in relation to the May 27 discharge date. Based on the foregoing, it is concluded that a current act of misconduct has not been established. Because a current act has not been established, the administrative law judge is not free to consider other, past acts of alleged misconduct.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated June 24, 2005, reference 01, is hereby affirmed. Mr. Perkhiser was discharged but a current act of misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf