

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

SUSAN C CASTLE
PO BOX 264
STANHOPE IA 50246

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

Appeal Number: 05A-UI-08323-CT
OC: 07/03/05 R: 01
Claimant: Respondent (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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. (Electrolux) filed an appeal from a representative's decision dated August 4, 2005, reference 01, which held that no disqualification would be imposed regarding Susan Castle's separation from employment. After due notice was issued, a hearing was held by telephone on August 30, 2005. Ms. Castle participated personally. The employer participated by Lavonne Russell, Benefits Administrator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Castle was employed by Electrolux from February 8, 1999 until June 16, 2005. She was last employed full time on the fabrication line. She was separated from employment pursuant to a work rule that provides for discharge if an individual violates shop rules on five occasions during a 12-month period.

Ms. Castle was suspended from work on August 13, 2004 for using abusive language to a coworker. The two were having an argument and the other individual used profanity and threatened Ms. Castle. Rather than involve management, Ms. Castle responded in kind and called the other party a "fucking bitch." On September 23, she was written up for violation of a safety rule. The specific details of the violation are unknown. Ms. Castle received a written warning on November 5 for being out of her work area. She received another written warning and a one-day suspension on February 3 for being out of her work area. On May 3, she received a verbal warning for smoking either in an unauthorized area or at an unauthorized time. Ms. Castle denied the allegation because she had quit smoking by that time. The final incident that triggered the discharge occurred on June 13 when Ms. Castle was again out of her work area. She had failed to return to her work station in a timely manner after break.

Based on the number of warnings she had received during the preceding 12 months, Ms. Castle was notified of her discharge on June 16, 2005. She filed a claim for job insurance benefits effective July 3, 2005. She has received a total of \$2,592.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Castle 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). Ms. Castle's discharge was based on the number of warnings she had received. In making a decision in this matter, the administrative law judge has not considered the warning of September 23, 2004 as the employer was unable to provide specific details concerning the violation. Ms. Castle is given the benefit of the doubt regarding the warning of May 3 as she denied that she was a smoker.

Ms. Castle had three warnings for being out of her work area. She knew or should have known that continuing to be out of her area might result in discharge. In spite of the various warnings, she continued to be away from her work area without justification or permission. It was her responsibility to make sure she returned to her area timely following a break. The evidence establishes a pattern on Ms. Castle's part of disregarding the employer's standards. For the reasons stated herein, it is concluded that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Ms. Castle has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated August 4, 2005, reference 01, is hereby reversed. Ms. Castle was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Castle has been overpaid \$2,592.00 in job insurance benefits.

cfc/pjs