

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFF D MABE**  
Claimant

**APPEAL NO: 07A-UI-04423-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTROLUX HOME PRODUCTS INC  
FRIGIDAIRE**  
Employer

**OC: 04/30/06 R: 04  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Frigidaire (employer) appealed a representative's April 18, 2007 decision (reference 03) that concluded Jeff D. Mabe (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Mallory Russell, a human resource generalist, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Three were offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 23, 2005. The claimant worked as a full-time press floater in the press department. The employer has a point system for attendance. If an employee accumulates more than ten points in a year, the employee will be discharged. The employer's year runs from July 1 through June 30.

On October 6, 2006, the claimant received a documented verbal warning because he had accumulated 7.5 attendance points since July 1, 2006. (Employer Exhibit One.) The claimant did not call or report to work on October 13 and 16. He received a point for each of these occurrences. The claimant was also absent from work on October 17 and 18. Even though the

claimant had accumulated 11.5 attendance points as of October 20, the employer did not discharge him because the employer's policy informs employees that before they can be discharged for attendance issues they must receive a final written warning. The employer gave the claimant his first written warning for attendance problems on October 20, 2006. (Employer Exhibit Two.)

The claimant was absent from work on February 13. The claimant's doctor did not indicate the claimant should be excused from work on February 13. Instead, the claimant's FMLA started on February 14. The claimant was on FMLA until February 28 when he returned to work. The claimant did not receive any attendance points when he was on FMLA. On February 28, the claimant received his final written warning for his February 13 absence. (Employer Exhibit Three.)

The claimant was again on FMLA March 1 through 7, 2007. The employer understood the claimant's physician released him to return work on March 7. The claimant was absent from work on March 8 and 9. The claimant did not call or report to work on March 12 and 13. The claimant called the employer on March 14 and reported he was unable to work. On March 15, the claimant did not call or report to work. The employer's FMLA administrator tried to contact the claimant after March 7 in an attempt to obtain the necessary paperwork to extend the claimant's FMLA. When the claimant did not provide more documentation, he did not receive an extension of his FMLA. The employer discharged the claimant on March 23, 2007, for violating the employer's attendance policy or for having excessive unexcused absenteeism.

The claimant established a claim for unemployment insurance benefits during the week of April 30, 2006. He reopened this claim the week of March 25, 2007. The claimant filed claims for the weeks ending March 31 through April 28, 2007. He received his maximum weekly benefit amount of \$324.00 during these weeks. The claimant established a new benefit year during the week of May 6, 2007. He filed a claim for benefits for the week ending May 12 and received \$334.00 in benefits for this week.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known his job was in jeopardy when he received a final written warning for attendance issues on February 28, 2007. The claimant also knew or should have known the employer would not assess him any attendance points when he was on FMLA. The claimant's physician released the claimant to return to work on March 7, 2007. Even

though the employer's FMLA administrator attempted to obtain additional documentation to extend the claimant's FMLA, the claimant did not provide the necessary paperwork. Since the claimant did not participate in the hearing, it is not known why the claimant failed to report to work or even regularly call the employer subsequent to March 7, 2007. The claimant's failure to call or report to work after March 7 amounts to conduct that intentionally and substantially disregards the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for work-connected misconduct. As of March 25, 2007, the claimant is not qualified to receive unemployment insurance 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 March 31 through May 12, 2007. The claimant has been overpaid \$1,954.00 in benefits he received for these weeks.

**DECISION:**

The representative's April 18, 2007 decision (reference 03) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 25, 2007. 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 has been overpaid and must repay a total of \$1,954.00 in benefits he received for the weeks ending March 31 through May 12, 2007.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs