#### BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

| WALTER PIATT                |                                |
|-----------------------------|--------------------------------|
| Claimant,                   | : HEARING NUMBER: 09B-UI-09712 |
| and                         | EMPLOYMENT APPEAL BOARD        |
| ELECTROLUX HOME PRODUCTSINC | : DECISION                     |

Employer.

# NOTICE

THIS DECISION BECOMES FINAL unless (1) a request for a REHEARING is filed with the Employment Appeal Board within 20 days of the date of the Board's decision or, (2) a PETITION TO DISTRICT COURT IS FILED WITHIN 30 days of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

# DECISION

### UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is AFFIRMED.

Elizabeth L. Seiser

Monique F. Kuester

#### DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge. The claimant was off work on FMLA when his leave expired. On July 18<sup>th</sup>, the claimant spoke to the employer to see if anything could be done about his attendance point level. The employer told him that nothing could be done. (Tr. 17-18) The claimant was over his point allotment for which he received a final warning that he was at discharge level. The employer asked the claimant to come in for a meeting. The claimant reasonably believed he was going to be discharged at this meeting. Based on the circumstances, any reasonable person would conclude that the claimant retired in lieu of being discharged.

This situation is analogous to the employer's requiring the claimant to quit in lieu of being discharged wherein 871 IAC24.26(21) does not consider such a separation as a voluntary leaving. For the above reasons, I would conclude that the claimant's separation should be characterized as either a discharge for which misconduct was not established; or in the alternative, an involuntary quit due to medical reasons for which the issue of able and available needs to be determined. I would therefore, remand this matter to the Iowa Workforce Development Center Claims Section, for a determination of the able and available issue.

John A. Peno

AMG/ss