

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH D ATKINS
Claimant

APPEAL NO. 08A-UI-10248-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

**OC: 08/03/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 24, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 18, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. April Ely participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an advanced operator from March 11, 2002, to July 30, 2008. Under the employer's work rules, employee's were subject to discharge for absenteeism after receiving progressive discipline of a verbal warning, written warning, and final written warning.

The claimant received a verbal warning on January 4, 2008, because he called in absent on January 3, 2008. He received a written warning on February 4, because he was 18 minutes late for work that day. He received a final written warning on February 21, 2008, after he was absent from work on February 18, 19, and 20, 2008.

On May 15, 2008, the claimant was unable to work due to a medical reason. He properly called in and informed the employer that he was unable to work. He missed work for the same reason on May 16, 19, and 20, with notice to the employer. The employer's sickness and accident company determined that the claimant was excused from working on May 16, 19, and 20, but not on May 15, because his medical excuse did not cover this day.

The claimant was informed that he was subject to discharge under the employer's attendance policy, but was given an opportunity to submit documentation to the sickness and accident company to get the day excused. The claimant believed that he had provided medical documentation but it was not accepted by the sickness and accident company.

The claimant was allowed to continue to work. He was absent from work due to illness properly reported and excused by a doctor on June 2 through 4. He was absent from work on July 11, 2008, due to illness properly reported. For some unknown reason, the claimant was not discharged for excessive absenteeism until July 30, 2008. The employer asserts that it was his unexcused absence on May 15 that caused his discharge.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

871 IAC 24.32(7) provides excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. Also, 871 IAC 24.32(8) provides that past acts and warnings can be used to determine the magnitude of a current act of misconduct, but a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

No current act of willful and substantial misconduct has been proven in this case since the claimant was not discharged until July 30, 2008, for an absence that happened on May 15, 2008. The claimant's absences were due to medical reasons and the claimant properly reported his absences. The fact that the employer's sickness and accident company did not accept the claimant's documentation for a particular absence does not show misconduct under the law.

DECISION:

The unemployment insurance decision dated October 24, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs