

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY K BATES

Claimant

APPEAL NO. 07A-UI-00107-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

Employer

**OC: 11/26/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Electrolux Home Products (employer) appealed a representative's December 21, 2006 decision (reference 01) that concluded Barry Bates (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 22, 2007. The claimant participated personally. Additionally the claimant offered Kimberly Kuester, former co-worker, and Sandra Bates, the claimant's wife and former co-worker. The employer participated by Casey Sciorratta, Human Resources Manager, and LaVonne Russell, Benefits Administrator.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 24, 1998, as a full-time specialist 1. The claimant's wife had repeatedly reported or attempted to report harassment of herself and husband to the Human Resources Department. The handbook instructed an employee to report harassment to the Human Resources Department. The Human Resources Department put the claimant's wife off to another time or sent her to her immediate supervisor. The claimant and his wife suffered repercussions from the immediate supervisor and the harassers.

On November 16, 2006, the harasser and others were taking parts off the line and intentionally scratching and denting them. The employer did not respond to the harasser's actions.

On November 28, 2006, the harasser approached the claimant and threw some parts. He told the claimant to keep his parts in his area or he would kick his ass. The claimant was fearful. Later in the parking lot the claimant tried to make peace with the harasser. The harasser shoved the claimant. When the claimant tried to get away the harasser started to choke the claimant and formed a fist in preparation to hit the claimant. The claimant put the harasser in a

headlock to defend himself. A supervisor approached the two and the situation dissolved. The claimant went back to work with red marks on his neck.

The employer was informed and both the claimant and the harasser were suspended. On December 1, 2006, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. The employer did not handle the harassment situation in accordance with its handbook. The claimant was left on his own to protect himself from the aggressor. When the claimant protected himself, the employer terminated him.

Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 21, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs