

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMOURYA M HARRIS
Claimant

APPEAL NO. 06A-UI-11791-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ELECTROLUX HOME PRODUCTS INC
FRIGIDAIRE**
Employer

OC: 06/18/06 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Final Act of Misconduct

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. filed a timely appeal from an unemployment insurance decision dated November 28, 2006, reference 05, that allowed benefits to Amourya M. Harris. After due notice was issued, a telephone hearing was held December 19, 2006, with Mr. Harris participating. Human Resources Generalist Mallory Russell participated for the employer.

ISSUE:

Was the claimant discharged for a current act of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Armourya M. Harris was employed by Electrolux Home Products, Inc. from August 9, 2006 until he was discharged October 23, 2006 because of attendance. On October 10, 2006 Mr. Harris was sent home before the end of his shift because he was ill. On September 18, 2006 Mr. Harris was absent because his car broke down as he was driving to work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to discharge was a current act of misconduct. See 871 IAC 24.32(8).

The evidence establishes that the final incident leading to discharge was Mr. Harris' absence for part of his shift on October 10, 2006. The evidence establishes that Mr. Harris was sent home by his supervisor because he was ill. Absence due to illness properly reported to the employer cannot be considered an act of misconduct. See 871 IAC 24.32(7). Mr. Harris was also absent for personal reasons on September 18, 2006. It does not constitute a disqualify event for two reasons. First, a single unexcused absence is insufficient to establish excessive unexcused absenteeism. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). Furthermore, this absence occurred more than a month prior to the discharge and also prior to the final incident as described in the employer's testimony. Thus, it cannot be considered a current act of misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated November 28, 2006, reference 05, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css