

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUPITA MENDOZA**  
Claimant

**APPEAL NO. 07A-UI-01059-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTROLUX HOME PRODUCTS INC**  
Employer

**OC: 12-17-06 R: 02**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the January 18, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on February 14, 2007, via telephone conference call. Claimant did participate. Employer did participate through Mallory Russell.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct and whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full time production worker from October 1999, through December 13, 2006, when she was discharged for being excessively absent and not providing required notification.

Ms. Mendoza was aware that she had an obligation to provide notice to the employer when she was going to be absent. The claimant had been warned and reminded of this obligation not only by the employer but also by a union representative. Ms. Mendoza had failed to respond to the company's "no call" letter for two weeks after it was sent. After reporting back to work on December 7, 2006, the claimant again was absent the following day and once again did not provide required notification. Ms. Mendoza had been warned and had been sent letters by the company repeatedly requesting that she provide notification personally for absences. When the claimant continued to violate the notification policy, she was discharged. It is the claimant's contention that the employer may have been otherwise notified and thus the claimant did not need to provide personal notification, although it had been requested.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in showing that Ms. Mendoza's discharge was under disqualifying conditions. The evidence establishes that company policy requires personal notification when an employee is going to be absent. Ms. Mendoza was aware of the rule and had been repeatedly warned and requested to supply notification when she was going to be absent. Evidence

establishes that not only the company but also her union representative had instructed the claimant to provide notification. In spite of repeated warnings and requests, the claimant continued to be absent without providing notification and was discharged. The discharge was for misconduct. Benefits are denied.

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.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge holds that the claimant is overpaid unemployment insurance benefits in the amount of \$2,338.00 pursuant to Iowa code section 96.3-7 because a decision has determined claimant is ineligible to receive benefits due to misconduct termination.

**DECISION:**

The decision of the representative dated January 18, 2007, reference 01, is hereby reversed. Claimant was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages equal to ten times her weekly job insurance benefit amount, provided she meets all other eligibility requirements. Claimant is overpaid unemployment insurance benefits in the amount of \$2,338.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tpn/kjw