

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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ELECTROLUX HOME PRODUCTS INC  
FRIGIDAIRE  
c/o TALX EMPLOYER SVCS  
PO BOX 1160  
COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-10755-SWT  
OC: 06/20/04 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit  
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 24, 2004, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 27, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Casey Sciorotta participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as an advance operator from March 3, 2003, to August 18, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be considered to have voluntarily quit employment after three days of

absence without notice to the employer. Under these work rules, employees receive attendance points for unscheduled absences and were subject to termination after receiving ten attendance points. Employees, however, cannot be discharged without receiving a written attendance warning first. Under the work rules, employees are considered to have voluntarily quit employment after three consecutive workdays without notice to the employer.

The claimant was absent due to illness on August 19, 20, 23, 24, and 25. She called in on each day and reported that she was sick. On August 26, the claimant called in and said she was going to late but she later called in and reported that she would not be at work because she was not feeling well. The claimant was not scheduled to work on August 27 and 28.

On August 31, 2004, the claimant was absent from work without notice to the employer. By that time, the claimant had calculated that she had received ten points and assumed that she would automatically be discharged. This assumption was false since the employer would not have terminated her without giving her a written warning first. The claimant was absent without notice on September 1 and 2 as well. On September 3, the claimant contacted the employer about getting a check for her unused vacation. She was informed that she would have to come in and sign a termination form to receive the vacation check. When the claimant came in, she was informed that the employer considered her to have quit since she was absent for three days without notice to the employer.

The claimant filed for and received a total of \$1,500.00 in unemployment insurance benefits for the weeks between September 12 and October 16, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant stopped reporting to work or notifying the employer after August 26, 2004, because she assumed that she did not have a job anymore. Her assumption, however, was false, as the employer's attendance policy does not allow for termination until the employee receives a written warning. The claimant, therefore, abandoned her job based on this false assumption.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits effective September 5, 2004, and was overpaid \$1,500.00 in benefits for the weeks between September 12 and October 16, 2004.

**DECISION:**

The unemployment insurance decision dated September 24, 2004, reference 03, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$1,500.00 in unemployment insurance benefits, which must be repaid.

saw/tjc