

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY F MABE
Claimant

APPEAL NO. 07A-UI-04011-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

**OC: 02/18/07 R: 01
Claimant: Respondent (2)**

Section 96.5-3-a – Refusal to Accept Suitable Work
871 IAC 24.1(113)a – Separations From Employment
Section 96.5-1 – Voluntary Leaving – Layoff
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Electrolux Home Products (employer) appealed a representative's April 11, 2007 decision (reference 03) that concluded Jerry Mabe (claimant) eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2007. The claimant participated personally and through his brother, Jeff Mabe, former co-worker. The employer participated by Mallory Russell, Human Resources General.

ISSUE:

The issue is whether the claimant was laid off for lack of work and whether he refused suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 11, 2007, as a full-time worker. At the time of his hire the claimant informed the employer that he could not see at night and had to be assigned a daytime shift. The claimant is prohibited from driving at night and he could not drive to work. The employer hired the claimant to work daytime hours. No information regarding the claimant's lack of transportation was recorded in the claimant's file.

On February 16, 2007, the claimant was laid off for lack of work. On or about March 19, 2007, the employer telephoned the claimant and offered to return him to work the second shift. The claimant told the employer that he could not work anything but the daytime shift. The employer told him he had to work second shift. The claimant could not appear for second shift work on March 26, 2007. The employer separated the claimant from employment.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible. The employer testified to the claimant's incorrect title, shift, and set of circumstances. The employer appeared to have the claimant's and his brother's files co-mingled.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off for lack of work.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer laid the claimant off for lack of work on February 16, 2007. When an employer suspends a claimant from work status for a period of time, the separation does not prejudice the claimant. The claimant is eligible to receive unemployment insurance benefits.

For the following reasons, the administrative law judge finds the claimant did refuse suitable work.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Each case must be decided on its own merits. Where an individual claimant was laid off a first shift job and refused recall to a second shift position, disqualification was proper where the claimant failed to make an effort to arrange for child care and transportation. Pohlman v. Ertl Company, 374 N.W.2d 253 (Iowa 1985). The claimant refused an offer of suitable work because he did not have transportation. Benefits are denied as of the week ending March 31, 2007.

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 claimant has received benefits since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's April 11, 2007 decision (reference 03) is reversed. The claimant was laid off for lack of work. He is eligible to receive unemployment insurance benefits from February 16 until March 24, 2007. After March 24, 2007, the claimant refused suitable work by failing to appear for work. Benefits are denied as of the week ending March 31, 2007. The claimant is overpaid benefits in the amount of \$1,059.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw