

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J WILLIAMS

Claimant

APPEAL NO. 06A-UI-11372-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

Employer

**OC: 11/16/06 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. (employer) appealed a representative's November 16, 2006 decision (reference 01) that concluded Brian J. Williams (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 12, 2006. The claimant responded to the hearing notice. The claimant was not available for the hearing. A message was left on the claimant's answering machine, but he did not contact the Appeals Section during the hearing. Mallory Russell, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant as a full-time employee in August 2006. The claimant started working on August 16, 2006. At the time of hire, the employer informed the claimant that during his 90-day probation he could not be absent from work. If a probationary employee is absent, the employer can discharge the employee for failing to satisfactorily complete a probation.

On August 22, the claimant was not at work for 4.7 hours because of a court hearing. On September 7, the claimant did not call or report to work. On September 8, Mallory informed the claimant's supervisor that the claimant had an attendance issue and should be discharged.

The claimant's supervisor did not discharge the claimant. The claimant was then absent from work on September 14 and 15. The claimant provided the employer with a doctor's statement verifying he had been ill and unable to work these two days. On September 19, the claimant was absent for half a day without notifying the employer that he would be absent.

On October 24, the employer discharged the claimant for excessive absenteeism during his probation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant because he did not satisfactorily complete his probation. The employer discharged the claimant primarily because of attendance issues. The last time the claimant was absent for all or part of his shift was September 19, a month before the employer discharged him. The facts do not establish that the employer discharged the claimant for a current act of work-connected misconduct. Therefore, the claimant is qualified to receive unemployment insurance benefits as of October 22, 2006.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's November 16, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected

misconduct. As of October 22, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css