

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARI OWEN-BAHR
Claimant

APPEAL NO. 07A-UI-04013-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

OC: 05-07-07 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 11, 2007, reference 06, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 8, 2007. The claimant participated in the hearing. Mallory Russell, Human Resources Generalist, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time drum vaner for Electrolux from December 19, 2005 to March 8, 2007. The employer's no-fault attendance policy allows employees to accumulate ten points before their employment is terminated. On July 21, 2006, the claimant was absent because she took her birthday off and received one point; on July 25, 2006, she experienced heart palpitations and the company nurse sent her to the emergency room and she received one-half point; on August 20, 2006, she was absent and believes it was because either she or her children were ill and received one point; on September 18, 2006, she believes she was absent for the same reason and received one point; on September 24, 25 and 26, 2006, she was absent because her children had the flu and she received three points; on October 26, 2006, she took the day off for her son's birthday and received one point; on January 31, 2007, she left early due to illness and received one-half point; on February 1, 2007, she was absent but does not recall the reason and received one point; and on March 1, 2007, she was absent due to blizzard conditions and received one point which put her over the allowed number of attendance points. The claimant lives out in the country 42 miles away from the employer and could not travel March 1, 2007, because of the snowstorm. The Governor and state troopers advised the public not to travel as several roads and interstates were closed and travel conditions were dangerous. The claimant received a verbal warning in writing November 2, 2006, after accumulating seven points; a written warning February 4, 2007, after accumulating

eight points; a final written warning February 7, 2007, after accumulating nine points; and was terminated March 8, 2007, for accumulating ten points (Employer's Exhibit One).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the claimant did exceed the allowed number of attendance points, at least six of her ten points were due to illness and the final absence was due to weather conditions beyond her control. Consequently,

the administrative law judge concludes the claimant's absences do not rise to the level of excessive unexcused absenteeism as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The April 11, 2007, reference 06, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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