

**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**

**SHERRI VESTERBY  
705 – 2<sup>ND</sup> AVE S  
HUMBOLDT IA 50548**

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

**Appeal Number: 05A-UI-06489-CT  
OC: 03/13/05 R: 01  
Claimant: Respondent (1)**

**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(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. (Electrolux) filed an appeal from a representative's decision dated June 8, 2005, reference 02, which held that no disqualification would be imposed regarding Sherri Vesterby's separation from employment. After due notice was issued, a hearing was held by telephone on July 11, 2005. Ms. Vesterby participated personally. The employer participated by Mallory Russell, Human Resources Generalist.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Vesterby was employed by Electrolux from April 11 until

May 24, 2005 as a full-time machine operator. She was discharged due to unsatisfactory attendance during the 65-day probationary period.

All of Ms. Vesterby's absences were for medical reasons and were all supported by a doctor's statement. All of the absences were timely and properly reported to the employer. Ms. Vesterby had not received any warnings about her attendance. Attendance was the sole reason for the discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Vesterby was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving job insurance benefits if she was excessively absent on an unexcused basis. Absences which are for reasonable cause and which are properly reported to the employer are considered excused absences.

All of Ms. Vesterby's absences are excused as they were all due to illness and were properly reported. Moreover, she provided the employer with doctor's statements verifying the need to be absent. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated June 8, 2005, reference 02, is hereby affirmed. Ms. Vesterby was discharged by Electrolux, but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/sc