

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICK B WITHERS

Claimant

APPEAL NO. 08A-UI-07784-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

Employer

**OC: 07/27/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated August 20, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 15, 2008. The claimant participated. The employer participated by April Ely, human resource generalist.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from March 2003 until July 29, 2008, when he was discharged from employment. Mr. Withers was employed as a full-time production worker and was paid by the hour. The claimant was discharged after he accidentally broke the glass in a company vending machine. The claimant was attempting to obtain a refund from the machine and inadvertently struck a glass portion of the machine while tapping with his hand on a metal portion to free the mechanism. Mr. Withers reported the incident to his lead person and offered to make restitution. Under company policy, individuals who intentionally damage company equipment are subject to immediate discharge.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Withers was discharged for intentional disqualifying misconduct in connection with the employment. It does not.

The evidence in the record establishes that the claimant accidentally broke a glass portion of a company vending machine while attempting to free a change mechanism in the machine. Mr. Withers immediately reported the incident to his lead person and offered to make restitution to the company.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Mr. Withers may have been a sound decision from a management viewpoint, the evidence does not establish intentional disqualifying misconduct on the part of the claimant. The administrative law judge finds the claimant's conduct to be an isolated instance of poor judgment in an otherwise unblemished employment record. The evidence does not establish the claimant intentionally damaged company equipment or that the claimant attempted to conceal his conduct.

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.

For the reasons stated herein, the administrative law judge concludes the claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 20, 2008, reference 01, is hereby affirmed. The claimant was discharged under non-disqualifying conditions. Benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw