

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICHITH LOVAN
Claimant

APPEAL NO: 09A-UI-19202-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

OC: 11/08/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's December 15, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on February 4, 2010. The claimant participated in the hearing. Chad Dirks, the paint area and safety manager, participated on the employer's behalf.

When April Ely, another witness for the employer, was called, she did not pick up the phone and a message was left for her to contact the Appeals Section. Ely called the Appeals Section while the hearing was in progress, but the administrative law judge did not know Ely called until after the hearing was closed and the witnesses had been excused. After the hearing had been closed, Ely was called and asked if the employer wanted the hearing reopened. After Ely talked to Dirks, she left a message with the Appeals Section that the employer would not make a request to reopen the hearing. Based on the evidence, the arguments of the parties, 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 claimant started working for the employer on November 19, 1991. The claimant worked on second shift as a tool maker. The claimant understood the employer required employees to use the lockout, tag out procedure when working inside a press. The employer's policy also informs employees that they will be discharged the first time the employer discovers an employee has not used the lockout, tag out procedure.

On November 6, the claimant went to look at a machine that had reported problems. While the setup person explained the problem and the claimant was trying to troubleshoot the potential problem, his supervisor walked by. The claimant's supervisor reported the claimant was inside the press machine but had not locked or tagged out the machine before he went inside. The

claimant denied he was inside. Instead, the claimant was cycling the press and he was outside the machine when his supervisor came.

Prior to November 6, the claimant's job was not in jeopardy and he had no previous problems with the lockout, tag out policy. The employer discharged the claimant on November 8 for violating the employer's safety procedure on November 6, 2009.

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 section 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).

The employer's reliance on hearsay information from a person who did not testify at the hearing, the claimant's supervisor, cannot be given as much weight as the claimant's credible testimony. A preponderance of the evidence establishes the claimant did not violate the employer's safety policy the night of November 6, 2009. Based on the information the employer relied upon when discharging the claimant, the employer established justifiable business reasons for discharging the claimant. The evidence does not, however, establish that the claimant committed work-connected misconduct. As of November 8, 2009, the claimant is qualified receive benefits.

DECISION:

The representative's December 15, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for compelling reasons, but the evidence does not establish that the

claimant committed work-connected misconduct. As of November 8, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs