

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN DARLAND
Claimant

APPEAL NO: 10A-UI-04791-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

OC: 02-21-10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2010, reference 01, 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 12, 2010. The claimant participated in the hearing. April Ely, Human Resources Generalist, participated in the hearing on behalf of the employer.

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 laundry center line operator for Electrolux from January 26, 1998 to February 23, 2010. The employer uses a no-fault attendance policy and employees are allowed ten points in a rolling calendar year before termination occurs. The claimant had one lung removed in 2002 and consequently had difficulty breathing. He was on intermittent FMLA in 2008/2009 but exhausted it in October 2009 and had not worked enough hours to qualify after that so he was allowed to use the employer's sickness and accident leave and be assessed two points for his entire absence if he was going to be gone for a period of time. The claimant injured his neck and could not turn his head July 24, 2009. His physician prescribed an epidural injection but he could not get in for that until August 14, 2009, and he returned to work the following day, receiving two attendance points. He was tardy August 19, 2009, because he had a flat tire and received one-half point. He was absent August 20, 2009, but does not recall why and received one point. He left early August 25, 2009, because he was having trouble breathing and received one-half point. He was tardy September 11, 2009, and received one-half point. He was absent September 21, 30, November 9 and December 9, 2009, due to breathing problems and received one point for each absence. He fell on the ice in his driveway at home December 9, 2009, and was absent December 10 through December 22, 2009, due to back problems but used sickness and accident leave and received two points. He was laid off or on vacation or holiday between December 23 and January 3, 2010. His mother passed away January 4, 2010, and he was off work on a leave of absence, vacation and layoffs

until January 13, 2010, when he returned to work and received a verbal warning in writing for his attendance. He received a written warning and final written warning January 14, 2010, for his attendance. He was absent due to inclement weather January 26, 2010, along with 160 other employees, and the employer terminated his employment February 23, 2010, for his January 26, 2010, absence, after checking with its third party FMLA and sickness and accident provider to insure his point total was correct.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant had several absences and exceeded the allowed number of attendance points, almost all of his absences were due to properly reported illnesses or injury from his neck injury, his breathing problems and his back injury and he was also absent because of the death of his mother. Those absences were not volitional and consequently cannot be counted against the claimant for the purposes of unemployment insurance benefits. He had two incidents of unexcused tardiness between July 24, 2009 and February 23, 2010, and his last absence, on January 26, 2010, was due to a snowstorm that prevented 160 employees from going to work. Two incidents of tardiness, one occurrence of leaving early and one absence due to a snowstorm does not constitute excessive unexcused absenteeism as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 18, 2010, reference 01, 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

je/css