

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WESLEY S WILLSON
Claimant

APPEAL NO. 07A-UI-04407-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ELECTROLUX HOME PRODUCTS INC
FRIGIDAIRE**
Employer

**OC: 04-01-07 R: 01
Claimant: Respondent (2)**

Iowa Code section 96.5(2)a – Discharge/Misconduct
Section 96.3-7 - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 19, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 15, 2007. The claimant did participate and was represented by Kevin Buckley his union representative. The employer did participate through (representative) Mallory Russell, Human Resources Generalist and Seth Beytien, Press Area Manager. Employer's Exhibit One was received.

ISSUES:

Was the claimant discharged for work related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a technician for utility setup in the press department full time beginning January 4, 1988 through April 2, 2007 when he was discharged.

The claimant was discharged for violating shop rule #2, that is for leaving the plant during working hours without permission from a supervisor or facilitator. On March 23, the claimant was seen at approximately 5:10 p.m. walking from the bank parking lot into a convenience store where he purchased some items. When confronted about why he was outside the plant the claimant had no good explanation. The claimant was not moving his car but was outside the employer's premises purchasing items from a store.

The claimant has received unemployment benefits since filing a claim with an effective date of April 1, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant knew that leaving the plant to go to a convenience store and make a purchase was prohibited without permission. The claimant knew that he was only allowed to move his car, but he did not move his car when he left, he went to a store to make a purchase. The claimant's actions constitute disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to

the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 19, 2007, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,735.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs