

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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| DAVID A ROMP Claimant ELECTROLUX HOME PRODUCTS INC Employer | <div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO. 07A-UI-03110-S2T ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 04/30/06 R: 01 Claimant: Appellant (1)</div> |
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Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Romp (claimant) appealed a representative's March 21, 2007 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Electrolux Home Products (employer) for excessive unexcused absenteeism. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2007. The claimant participated personally. The employer participated by Mallory Russell, Human Resources Generalist.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 18, 2003, as a full-time minster operator/specialist 2. The claimant received a copy of the company handbook and the handbook is posted in the workplace. The handbook provides a telephone number for employees to use to report absences one hour prior to the start of the shift. The claimant never reported his absences. He did not report his absence from work on August 4, 24, October 6, and November 17, 2006. The employer issued the claimant warnings on August 14, 30, and November 28, 2006. The employer warned the claimant that further infractions could result in his termination from employment.

On February 15, 2007, the claimant asked his supervisor for a leave of absence due to the birth of a grandchild. The leave was denied and the claimant did not speak to the Human Resources Department regarding the denial. The leave would have been approved. The claimant did not appear for work or notify the employer of his absence on February 16, 2007. On February 20, 2007, the employer terminated the claimant for repeated absences without notice.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Three incidents of tardiness or absenteeism after a warning constitutes misconduct. Clark v. Iowa Department of Job Service, 317 N.W.2d 517 (Iowa App. 1982). Excessive unexcused absenteeism is misconduct. Higgins v. Iowa Department of Job Service, 275 N.W.2d 187 (Iowa 1984). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by failing to properly report his absences. The claimant's disregard of the employer's interests is misconduct. As such, he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's March 21, 2007 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw