

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA ULICKI

Claimant

APPEAL NO: 06A-UI-10810-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

Employer

**OC: 09-24-06 R: 01
Claimant: Appellant (2)**

Section 96 5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 30, 2006, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 27, 2006. The claimant participated in the hearing. Mallory Russell, Human Resources Generalist, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

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 advanced operator on the laundry center line for Electrolux Home Products from June 2, 1998 to September 22, 2006. She was discharged for excessive absenteeism. The employer's attendance policy allows employees ten points during the fiscal year. If an employee has 6.5 points or less they carry over to the following year and termination occurs at ten points. The claimant suffers from bi-polar disorder and has been undergoing treatment for her condition for several years (Claimant's Exhibit A). She started July 2006 with 3.5 points and exhausted her FMLA leave July 6, 2006. On July 10 and July 18, 2006, she received two points for absences due to illness for which she was on short-term disability. She was scheduled to return August 8, 2006, but did not provide her return to work paperwork until August 11, 2006, and consequently received points for her absences August 9, 10 and 11, 2006. On August 31, 2006, she was a no-show no-call and received one point. On September 5, 6 and 7, 2006, she was absent and received one point for the three days because she provided a doctor's excuse. On September 11, 12, 13 and 14, 2006, she was absent with a doctor's note and received two points because she missed four days. On September 15, 2006, she was a no-call no-show and received one point. On September 18, 19 and 20, 2006, she was absent due to illness and received one point and on September 21, 2006, she was absent due to illness and received one point. The claimant received a verbal warning and a written warning September 8, 2006, and a final written warning September 15, 2006. On September 22, 2006, the claimant was severely depressed and could not get up to call the

employer to report she would be late or would not be in. She did go to work after missing 4.7 hours and the employer terminated her employment for excessive absenteeism.

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.

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 did exceed the allowed number of attendance points, those absences were due to her bi-polar disorder and were properly reported when she was able to do so. Although the last absence/tardy was not properly reported, the administrative law judge concludes she was not capable of reporting her tardiness on that day. Therefore, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established. Benefits are allowed.

DECISION:

The October 30, 2006, reference 02, decision is reversed. 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/pjs