

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY R BURNETT
Claimant

APPEAL NO. 08A-UI-00933-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

OC: 12/23/07 R: 01
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. (Electrolux) filed an appeal from a representative's decision dated January 18, 2008, reference 03, which held that no disqualification would be imposed regarding Randy Burnett's separation from employment. After due notice was issued, a hearing was held by telephone on February 12, 2008. Mr. Burnett participated personally. The employer participated by Mallory Russell, Human Resources Generalist.

ISSUE:

At issue in this matter is whether Mr. Burnett was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Burnett was employed by Electrolux from July 18, 1994 until December 20, 2007. He was last employed full time as a lift truck operator. He was discharged because of his attendance. He had accumulated more attendance points than allowed by the employer.

Mr. Burnett missed one-half day of work on July 3, 2007 because he overslept. He did not call to report that he would be late. He received a verbal warning concerning his attendance on July 19. He was absent on July 24 but did not call to report the absence. He received a written warning on July 30. Mr. Burnett was absent without calling in on August 13 and received a final written warning on August 16. He missed one-half day of work on August 17 but did not call to report that he would be late. He was absent on August 29 and September 12 but did not call the employer on either date to advise that he would be absent.

The final absence that prompted the discharge occurred on October 2. Mr. Burnett asked to have the day covered by the Family and Medical Leave Act (FMLA) and the appropriate paperwork was sent to him on or about October 4. He knew he had to make contact with his doctor's office on the day of absence in order to use FMLA on an intermittent basis. He had

15 days in which to submit the necessary medical certification from his doctor that he had a condition that required periodic absences from work. Both the employer and the union representative spoke to Mr. Burnett on a number of occasions in an effort to get the paperwork turned in. At one point, he indicated he had the paperwork in his car and would bring it in the following day. He did not do so. On still another occasion, he said he had it but again failed to submit it.

The employer received the FMLA paperwork from Mr. Burnett's doctor on December 7, 2007. He was subsequently approved to have FMLA coverage from August 2, 2007 through August 2, 2008. Mr. Burnett had accumulated other absences after October 2 that were covered by FMLA. However, because he had not made contact with his doctor on October 2, that absence was not covered by FMLA. He was told on December 11 that he had to provide medical documentation of the need to be absent for medical reasons on October 2. He was given until December 14 to obtain the required documentation. As of the discharge on December 20, Mr. Burnett still had not submitted anything from his doctor regarding October 2. Without the required documentation, the absence was considered unexcused and caused him to exceed the number of attendance points allowed by the employer. Attendance was the sole reason for the discharge.

Mr. Burnett filed a claim for job insurance benefits effective December 23, 2007. He has received a total of \$2,776.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

Mr. Burnett had unexcused absences on July 3, July 24, August 13, August 17, August 29, and September 12, 2007. All six are unexcused because he failed to notify the employer that he would be late or absent. The evidence failed to establish any good cause for the failure to notify the employer of the absences. The absence of October 2 is unexcused as it was not covered by a doctor's excuse as required. Since he had been on FMLA previously, Mr. Burnett knew he was required to have some contact with his doctor's office on the day of absence in order for it to be covered. Otherwise, an individual could claim FMLA coverage for an absence when, in fact, he was not ill.

It was not unreasonable for the employer to require proof that an individual was entitled to use FMLA to cover an absence. Mr. Burnett was given ample opportunity, over two months, to provide the documentation needed to cover his absence of October 2 but failed to provide it. Since he failed to establish that the absence was due to illness as required by the employer, it is unexcused. The administrative law judge appreciates that an absence that occurred on October 2 would not ordinarily constitute a current act in relation to a discharge that occurred on December 20. However, the absence did not become unexcused until Mr. Burnett failed to provide the required documentation. Prior to that time, the status of the absence was undetermined. The absence became unexcused on December 14, the deadline date by which the required documentation was to be provided. Mr. Burnett was gone beginning December 17 and did not return to work until December 20. For the above reasons, the administrative law judge concludes that the absence of October 2 represented a current incident.

Mr. Burnett accumulated seven periods of unexcused absenteeism during a period of approximately three months (July through October). The administrative law judge considers this excessive. Six of the unexcused absences were occasions on which he failed to contact the employer to report his absences. His conduct clearly demonstrated a lack of regard for the employer's standards. Excessive unexcused absenteeism constitutes a substantial disregard for the employer's standards and is, therefore, misconduct within the meaning of the law. For the reasons stated herein, benefits are denied.

Mr. Burnett has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 18, 2008, reference 03, is hereby reversed. Mr. Burnett was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Burnett has been overpaid \$2,776.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs