

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUPITA MENDOZA

Claimant

APPEAL NO. 07O-UI-03400-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC

Employer

**OC: 12/17/06 R: 02
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., filed a timely appeal from an unemployment insurance decision dated January 18, 2007, reference 01, that allowed benefits to Lupita Mendoza. After due notice was issued, a telephone hearing was held February 14, 2007, with Mallory Russell participating. Ms. Mendoza did not respond to the hearing notice. Administrative Law Judge Terence P. Nice issued a decision February 15, 2007, disqualifying Ms. Mendoza for benefits and setting up an overpayment of \$2,338.00. Ms. Mendoza filed an appeal with the Employment Appeal Board. In an order dated March 29, 2007, the Board remanded the case for further proceedings because the recording of Judge Nice's hearing could not be transcribed. After due notice was again issued, another telephone hearing was held April 26, 2007. Ms. Russell once again participated for the employer. Ms. Mendoza once again failed to respond to the hearing notice.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Lupita Mendoza was employed by Electrolux Home Products from October 6, 1999, until she was discharged December 13, 2006. The final incident leading to her discharge was her absence on December 8, 2006. Company policy requires that employees notify the employer at least one hour before the start of a shift. Ms. Mendoza did not report her absence until two hours after her shift had begun. Ms. Mendoza has received a final warning on December 7, 2006, because of absences for medical reasons but for which Ms. Mendoza did not make daily contact with the employer, as required by company policy. She had also received a verbal warning on September 26, 2006, for this same issue.

Ms. Mendoza had been off work in the fall of 2006 under a doctor's care. He had provided documentation releasing her from work through November 13, 2006. Ms. Mendoza was absent without any form of contact from November 14, 2006, until approximately November 27, 2006. The company mailed her a letter on November 17, 2006, saying that they believed that she had voluntarily quit because she had not reported to work or contacted the employer since the end of her excused leave of absence. This prompted Ms. Mendoza's return with a further release from her

doctor covering her through December 3, 2006. She worked on December 4, 5, 6, and 7, until the final incident occurred on December 8.

Ms. Mendoza has received unemployment insurance benefits since filing a claim effective December 29, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to medical conditions is potentially excusable. However, the claimant must properly report the absence to the employer. See 871 IAC 24.32(7). The evidence in this record establishes a pattern of absences without contact as required by company policy. Under these circumstances, benefits must be withheld.

The evidence establishes the claimant has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated January 18, 2007, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$2,338.00.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw