

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY J BESTICK-CLARK
Claimant

APPEAL NO. 08A-UI-03767-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

**OC: 03/16/08 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. (Electrolux) filed an appeal from a representative's decision dated April 7, 2008, reference 01, which held that no disqualification would be imposed regarding Amy Bestick-Clark's separation from employment. After due notice was issued, a hearing was held by telephone on May 2, 2008. Ms. Bestick-Clark participated personally and was represented by Kevin Fors, Attorney at Law. The employer participated by Lavonne Russell, Labor Relations Manager. Exhibits One through Seven were admitted on the employer's behalf.

The hearing was recessed because the employer had not received the exhibits timely submitted by Ms. Bestick-Clark. The hearing reconvened on May 16, 2008 with the same parties again participating. Exhibit A was admitted on Ms. Bestick-Clark's behalf.

ISSUE:

At issue in this matter is whether Ms. Bestick-Clark 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: Ms. Bestick-Clark was employed by Electrolux from May 6, 1991 until March 6, 2008. She was last employed full time on the production line. She was discharged based on complaints of harassment. Four employees approached management as a group on February 14, 2008 to complain about Ms. Bestick-Clark. The employer conducted an investigation and met with Ms. Bestick-Clark concerning the complaints for the first time on March 4. She continued to work her normal job during the interim and was not told she was being considered for discharge. The employer chose not to suspend her from work during the investigation. Ms. Bestick-Clark was notified of her discharge on March 6, 2008.

The employer had gathered witness statements by February 20. The union was not available on February 20, 21, and 22 to be a party to discussions with Ms. Bestick-Clark concerning the complaints.

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). The employer's burden included establishing that the discharge was predicated on a current act of misconduct. 871 IAC 24.32(8). In the case at hand, the conduct that resulted in Ms. Bestick-Clark's discharge came to the employer's attention on February 14 but she was not discharged until three weeks later. The employer did not address the issue with Ms. Bestick-Clark until two days before her discharge.

The administrative law judge appreciates that the employer wanted to conduct an investigation before deciding what disciplinary action, if any, was warranted. However, the employer had written statements from the complaining parties by February 20 and the union was available to represent Ms. Bestick-Clark's interests as of February 23. It was still over one week before the matter was brought to Ms. Bestick-Clark's attention as a possible discharge issue and almost two weeks before she was actually discharged. The evidence of record does not establish any justification for the delay.

The employer's delay in discharging Ms. Bestick-Clark precludes considering the February 14, 2008 complaint as a current act of misconduct. Because the evidence failed to establish a current act of misconduct, the administrative law judge is not free to consider other, past acts that might constitute misconduct. For the reasons stated herein, it is concluded that the employer has failed to sustain its burden of proving that Ms. Bestick-Clark should be disqualified from receiving benefits.

DECISION:

The representative's decision dated April 7, 2008, reference 01, is hereby affirmed. Ms. Bestick-Clark was discharged by Electrolux but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css