

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY H MCDONALD
Claimant

ELECTROLUX HOME PRODUCTS INC
FRIGIDAIRE
Employer

APPEAL NO. 07A-UI-06334-H2T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05-06-07 R: 01
Claimant: Respondent (2)

Section 96.5(2)a – Suspension/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 15, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 30, 2007. The claimant did participate. The employer did participate through Mallory Russell, Human Resources Generalist. Employer's Exhibit One was received.

ISSUE:

Was the claimant suspended for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a Specialist II/Steel Handler, full-time, beginning August 14, 1985 through date of hearing, as the claimant remains employed.

The claimant was suspended from May 9, 2007 through May 22, 2007. On May 4, 2007, the claimant failed to properly set steel coils in accordance with safety practices. One of the coils became stuck sideways in the stack and needed to be moved to prevent the stack from falling and injuring coworkers or damaging property. The claimant did not intentionally stack the coils wrong or intentionally make the mistake. The claimant had a coworker watching to insure that no other employees entered the aisle. The claimant did not notify his facilitator when the accident happened, as he was required to do. The plant manager happened by the area and noticed the accident and instructed the claimant to stop trying to correct it alone and had the maintenance worker team and another employee trainee come and use the crane to correct the stacks to prevent injury or damage. The claimant knew that the shop rules required he notify a facilitator immediately when an unsafe condition existed. The claimant was suspended due to his failure to notify the facilitator of the unsafe condition in the steel coil stacks.

Claimant has received unemployment benefits since filing a claim with an effective date of May 6, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment 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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proving disqualifying job misconduct. *Casper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

The claimant knew that the rules required he notify the facilitator when an unsafe condition was created. This notification lets the employer determine how to best remedy the situation and how to best protect employees from harm. The claimant's failure to notify the facilitator when he knew the situation was hazardous was sufficient misconduct to warrant his suspension. Benefits are denied during the period of suspension.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The June 15, 2007, reference 01, decision is reversed. Claimant was suspended from employment for misconduct. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant is overpaid benefits in the amount of \$556.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw