

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL B ELM
Claimant

APPEAL NO. 07O-UI-01529-NT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

**OC: 05/21/06 R: 01
Claimant: Respondent (2)**

Section 96.5-2(a) – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated December 14, 2006, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 27, 2007. Although notified, the claimant did not participate. The employer participated by Ms. Mallory Russell.

ISSUE:

The issues in this matter are whether the claimant quit for good cause attributable to the employer, whether the claimant was discharged for misconduct in connection with the work, and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from August 18, 2006, until October 9, 2006, when the employer considered that the claimant had left due to job abandonment. Mr. Elm worked as a full-time production worker and was paid by the hour. On October 4, 2006, Mr. Elm was arrested at the job site. The claimant did not report for scheduled work the next working day or thereafter and did not provide any notification to the employer on a daily basis as required by company policy. After the claimant had failed to report or provide required notification on October 5, 6, and 9, 2006, the claimant was sent a certified letter indicating the claimant had been removed from employment for failure to report or notify for three or more work days. Employees are aware that they have an obligation to contact the employer each day that they are unable to work for scheduled work to provide the employer notification and reasons for their non-attendance.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds the evidence establishes that Mr. Elm was scheduled for work on October 5, 6, and 9, and failed to report or provide any notification to the employer that he would not be reporting or the reasons for it. The claimant did not again contact the employer for a number of weeks and subsequently indicated to the employer that he had been incarcerated.

871 IAC 24.25(4), (16) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(16) The claimant is deemed to have left if such claimant becomes incarcerated.

For the reasons stated herein, the administrative law judge concludes that the claimant voluntarily quit his employment for reasons that were not attributable to the employer. Accordingly, benefits are denied.

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

DECISION:

The December 14, 2006, reference 01, decision is reversed. The claimant voluntarily quit employment for reasons not attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has been overpaid benefits in the amount of \$2,256.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw/css