

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY DUPUY**  
Claimant

**APPEAL NO. 07A-UI-03612-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTROLUX HOME PRODUCTS INC**  
Employer

**OC: 04-30-07 R: 01**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 28, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 24, 2007. The claimant participated in the hearing. Mallory Russell, Human Resources Generalist, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time quality technician for Electrolux Home Products from July 24, 1998 to March 7, 2007. The employer has a no-fault attendance policy and employees are terminated when they reach 10 points. The claimant had five and one-half points as of July 30, 2006. He was absent July 31, August 2, 3, and 4, 2006, due to a pulled muscle in his back before going on FMLA from August 5 through August 16, 2006. On August 21, 2006, he received verbal and written warnings for his absences July 31 and August 2, 3, and 4, 2006. The warnings were not issued earlier because the claimant was absent. On August 22, 2006, he was absent due to illness and received a final written warning August 24, 2006. On November 1, 2006, the claimant filled out FMLA paperwork because his mother was having surgery. On March 1, 2007, he went in a ditch on his way to work because of blizzard conditions and his employment was terminated March 7, 2007, for exceeding the allowed number of attendance points.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). With the exception of the last absence, the claimant's absences were due to illness, injury, or covered by FMLA. Because only one of the claimant's points accrued because of a non-illness situation, the administrative law judge cannot conclude that the claimant's absences were excessive. Therefore, benefits must be allowed.

**DECISION:**

The March 28, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw