

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUSTIN P TRACY**  
Claimant

**APPEAL NO. 06A-UI-10502-CT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**ELECTROLUX HOME PRODUCTS INC**  
Employer

**OC: 05/07/06 R: 01  
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. (Electrolux) filed an appeal from a representative's decision dated October 20, 2006, reference 01, which held that no disqualification would be imposed regarding Justin Tracy's separation from employment. After due notice was issued, a hearing was held by telephone on November 13, 2006. Mr. Tracy participated personally. The employer participated by Mallory Russell, Human Resources Generalist. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Tracy 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: Mr. Tracy began working for Electrolux on May 2, 2005 as a full-time laborer. On August 14, 2006, some of his coworkers reported that he was not working safely. It was reported that he was being careless with parts and was slinging them around. As a result of these reports, the employer suspected that Mr. Tracy was under the influence of drugs and conducted drug testing.

Mr. Tracy tested positive for marijuana. He acknowledged that he had used marijuana approximately two hours before the test was conducted. He is currently age 24 and has used marijuana daily since age 12. On August 31, 2006, Electrolux mailed Mr. Tracy a certified letter, return receipt requested, advising him of the positive test results. The letter advised him of the right to have a split of his original sample tested at a lab of his choosing. The letter advised him of the cost of such testing and that it had to be requested within seven days of August 31, 2006. Mr. Tracy did not request that a split of his original sample be tested.

The employer offered Mr. Tracy the opportunity to undergo drug rehabilitation. He agreed to rehabilitation and, on August 31, signed an agreement outlining the terms of his continued

employment. He was placed on a leave of absence until he entered treatment. Mr. Tracy began a 12-week outpatient treatment program on September 14 and returned to work on September 25, 2006. He became permanently separated from the employment on October 19, 2006.

Mr. Tracy filed an additional claim for job insurance benefits effective September 17, 2006. He received \$324.00 for each of the weeks ending September 23, September 30, October 21, and October 28, 2006.

#### **REASONING AND CONCLUSIONS OF LAW:**

Mr. Tracy was placed on a leave of absence effective August 14, 2006. The leave was at the employer's initiative because he had failed a drug screen and was awaiting placement in a treatment program. But for the positive drug test, he would have continued in the employment after August 14. For the above reasons, the administrative law judge concludes that the leave of absence was, in effect, a disciplinary suspension. Where an individual is unemployed as a result of a disciplinary suspension imposed by the employer, he is considered discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9).

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). Mr. Tracy was discharged after he tested positive for illicit drugs on August 14, 2006. An employer has the right to conduct drug testing if there is reasonable suspicion that an individual is at work under the influence of drugs. Iowa Code section 730.5(8)c. The employer required testing of Mr. Tracy because his coworkers reported that he was acting unsafely and being careless with parts. They reported that he was slinging parts around. The administrative law judge concludes that the conduct complained of was sufficient to establish abnormal conduct or erratic behavior at work, thereby justifying drug testing. See Iowa Code section 730.5(1)h. For the above reasons, the administrative law judge concludes that the drug testing conducted on August 14, 2006 was authorized by law.

Mr. Tracy tested positive for marijuana. Given his history of usage, it appears that the test results are not in dispute. At any rate, the employer did allow him an opportunity to have a split of his original specimen tested. The employer provided him with the notice required by Iowa Code section 730.5(7)i. He was advised of his right to retest, the costs of such testing, and the fact that he had to make the request within seven days. The notice was sent by certified mail, return receipt requested. Because the employer complied with the requirements of Iowa's drug testing laws, the test results may be used in determining whether Mr. Tracy was discharged for misconduct.

Mr. Tracy admitted to using marijuana approximately two hours before work. Given that he tested positive for marijuana, the administrative law judge concludes that he reported to work under the influence of drugs. His conduct was contrary to the employer's interest in a drug-free workplace. For the above reasons, the administrative law judge concludes that Mr. Tracy was suspended due to work-related misconduct. Accordingly, benefits are denied. This decision does not address the October 19, 2006 separation from employment. That issue will be addressed in a separate representative's decision.

Mr. Tracy received benefits after filing his additional claim effective September 17, 2006. The \$1,296.00 he received constitutes an overpayment. A portion of the benefits were received

after Mr. Tracy was separated permanently on October 19, 2006. However, he had not requalified for benefits between filing his additional claim and his permanent separation date. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated October 20, 2006, reference 01, is hereby reversed. Mr. Tracy was temporarily separated from employment on August 14, 2006 for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Tracy has been overpaid \$1,296.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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