

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS E GATEWOOD
Claimant

APPEAL NO. 06A-UI-11161-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

**OC: 10/15/06 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 November 9, 2006, reference 01, which held that no disqualification would be imposed regarding Dennis Gatewood's separation from employment. After due notice was issued, a hearing was held by telephone on December 5, 2006. Mr. Gatewood participated personally. The employer participated by Casey Sciorrotta, Human Resources Director.

ISSUE:

At issue in this matter is whether Mr. Gatewood 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. Gatewood was employed by Electrolux from March 4, 1983 until October 19, 2006. He was last employed full-time as a technician. He was discharged for the attempted removal of product belonging to the employer without permission. All product removed from the plant must have a property ticket authorizing its removal.

On October 19, the employer received an anonymous phone call alerting it to the fact that Mr. Gatewood might be removing property. At the end of his shift, his lunch box was checked and seven hooks belonging to the employer were found inside. The metal hooks are approximately four inches long and are valued at approximately \$4.00 each. The parts were not ordinarily used in Mr. Gatewood's department. He picked up the parts in question from the tool crib at approximately 10:30 a.m. on October 19 and placed them on the cabinet near his work area. His lunch box was on a table near the cabinet. The parts were still on the cabinet when Mr. Gatewood went to lunch at approximately 12:40 p.m. He accessed his lunch box on at least one occasion after lunch but before the end of his shift at 3:00 p.m. No one saw Mr. Gatewood put the parts in his lunch box. As a result of the above incident, he was discharged from the employment.

Mr. Gatewood filed a claim for job insurance benefits effective October 15, 2006. He has received a total of \$2,450.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

Mr. Gatewood was discharged by Electrolux. 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. Gatewood was discharged after he attempted to remove property belonging to the employer without first having permission to do so. Mr. Gatewood denied any knowledge of how the parts came to be in his lunch box. The administrative law judge did not find his denial credible. Presumably, one would not go to get parts unless they were to be used. Mr. Gatewood got the parts in question at 10:30 a.m. but still had not used them in his work at least two hours later. According to the employer, the parts found were not usually used in his department.

Mr. Gatewood testified that he accessed his lunch box after 12:40 p.m., which, according to his testimony, was the last time he saw the parts on the cabinet where he had placed them earlier. The administrative law judge finds it difficult to believe he could have placed another item in his lunch box without being aware that the hooks were in there. Even if he only opened one side of the top that zips on three sides, certainly the placement of another item in the lunch box would have caused some movement of the parts and a resulting noise. The seven parts were all metal. It is difficult to believe that the parts would not have made some metal-on-metal sound as Mr. Gatewood was moving it about in preparation to leave for the day. Any sound made by the parts would have alerted him to the fact that there was something in his lunch box that should not be there.

For the reasons cited above, the administrative law judge concludes that it was Mr. Gatewood who placed the seven parts in his lunch box with the intent of removing them from the company premises. His actions constituted theft, which is clearly contrary to the type of behavior an employer has the right to expect. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

Mr. Gatewood has received benefits since filing his claim. 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 November 9, 2006, reference 01, is hereby reversed. Mr. Gatewood was discharged 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. Gatewood has been overpaid \$2,450.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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