

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN L PATE
Claimant

APPEAL NO. 07A-UI-05367-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

OC: 04/22/07 R: 01
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Electrolux Home Products, Inc. filed an appeal from a representative's decision dated May 18, 2007, reference 02, which held that no disqualification would be imposed regarding Robin Pate's separation from employment. After due notice was issued, a hearing was held by telephone on June 13, 2007. Ms. Pate participated personally and Exhibits A through D were admitted on her behalf. The employer participated by Mallory Russell, Human Resources Generalist, and LaVonne Russell, Labor Relations Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Pate 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: Ms. Pate was employed by Electrolux from September 26, 2002 until April 25, 2007 as a full-time production worker. She was discharged because of her attendance. The employer has a "no-fault" attendance policy and workers are not required to give a reason for being absent. One point is given for each absence, whether it is reported or not. An individual is subject to discharge when she reaches ten attendance points. Points are not given if an individual has medical certification of the need to be absent.

Electrolux employees are required to submit medical documentation of absences to a third party, UnumProvident, for processing. Ms. Pate's treating physician submitted a "Certification of Health Care Provider" to UnumProvident on April 2, 2007 indicating that Ms. Pate was unable to work from February 23 through April 15, 2007 due to lumbar back pain. The physician also indicated that she would need to be absent on an intermittent basis between October 22, 2006 and June 30, 2007. On April 10, 2007, the physician provided information to UnumProvident that Ms. Pate would be able to return to work on June 30, 2007. The information provided by the physician was apparently not sufficient for UnumProvident to cover the absences under the employer's sickness and accident program. Because the absences were not certified as

medically necessary, Ms. Pate was given points for the absences that began on or about March 5, 2007. Her point total as of April 25, 2007 was in excess of the employer's limit and, therefore, she was discharged. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

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). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive. The administrative law judge is not bound by an employer's designation of an absence as "unexcused."

The evidence does not establish any unexcused absences for Ms. Pate. The exhibits admitted on her behalf establish to the satisfaction of the administrative law judge that the absences on and after March 5, 2007 were for medical reasons. Ms. Pate and her physician had a good-faith belief that the required information was being provided to UnumProvident in order to have the absences approved as medically necessary. The evidence failed to establish that Ms. Pate deliberately and intentionally acted in a manner she knew to be contrary to the employer's standards.

While the employer may have had good cause to discharge Ms. Pate because of her excessive absences, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Inasmuch as misconduct has not been established, no disqualification is imposed.

DECISION:

The representative's decision dated May 18, 2007, reference 02, is hereby affirmed. Ms. Pate was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css