

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS L WELLS**

Claimant

**ELECTROLUX HOME PRODUCTS INC  
FRIGIDAIRE**

Employer

**APPEAL NO. 07A-UI-03631-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/30/06 R: 01  
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absences

**STATEMENT OF THE CASE:**

Electrolux Home Products/Frigidaire filed a timely appeal from the March 29, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 24, 2007. Claimant Thomas Wells participated. Human Resources Generalist Mallory Russell represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two and Three into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment, based on excessive unexcused absences, that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Wells was employed by Electrolux Home Products/Frigidaire as a full-time, second-shift press operator from July 12, 2000 until March 8, 2007, when the employer discharged him for attendance. The hours for the second shift were 3:00 p.m. to 11:00 p.m., Monday through Friday. The employer has a written attendance policy that requires employees to telephone the employer at least one hour prior to the scheduled start of a shift if they need to be absent. Mr. Wells was aware of the policy.

The final absences that prompted the discharge occurred on March 1 and 2, 2007. On those days, Iowa was in the midst of a severe snow storm that rendered many roads impassable. On March 1, Mr. Wells left home at least an hour before his scheduled shift with the intent of driving the 22 miles from Eagle Grove to the production plant in Webster City. Several miles outside of Eagle Grove the claimant's vehicle became stuck in the snow. The claimant was not able to return home until 2:35 p.m., at which time he notified the employer that he was unable to make it to work. On March 2, Mr. Wells left home around noon and again got stuck in a snow drift on the highway. It took much longer for Mr. Wells to free his vehicle on this day, but Mr. Wells returned home around 2:00 p.m. Mr. Wells commenced his attempts to contact the employer, but was unable to get through until 3:25 p.m. The employer had 160 employees call in absent

for the second shift on March 1 due to the inclement weather. The employer had 112 employees call in absent for the second shift on March 2 due to the inclement weather.

Mr. Wells had received prior warnings for attendance. The employer issued the most recent warning on August 30, 2006, after which Mr. Wells' attendance improved.

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

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(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The evidence in the record establishes Mr. Wells' absences on March 1 and 2 were due to severe weather that made the roads between Mr. Wells' home and the production plant impassable. On each day, Mr. Wells made a good faith effort to go to work, but the weather conditions prevented him from making the trip. Both absences were excused absences under the applicable law because the absences were based on circumstances clearly beyond Mr. Wells' control. Because the final absences that prompted the discharge were excused absences, the evidence fails to establish a "current act" of misconduct upon which a disqualification for benefits must be based. See 871 IAC 24.32(8).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wells was discharged for no disqualifying reason. Accordingly, Mr. Wells is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Wells.

**DECISION:**

The claims representative's March 29, 2007, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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