

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW TRUSTY
Claimant

APPEAL NO. 08A-UI-00873-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELECTROLUX HOME PRODUCTS INC
Employer

**OC: 12-23-07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 16, 2008, reference 02, 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 February 11, 2008. 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 Specialist I for Electrolux Home Products from June 26, 2007 to December 20, 2007. He was discharged for exceeding the employer's allowed number of ten attendance points between July 1 and June 30. Employees receive one-half point for incidents of tardiness that are four hours or less in duration and one point for a full day absence. If an employee is absent two or more consecutive days with a doctor's note he receives two points. On September 26, 2007, the claimant left early and received one-half point; on September 27, 2007, he was absent and received one point; on October 1 and 3, 2007, he was tardy and received one-half point for each day; on October 12, 2007, he was absent and received one point; on October 17, 2007, he was tardy and received one-half point; on October 22, 2007, he was gone five hours for a family emergency and received one point; on October 23, November 1 and 2, 2007, he was absent and received one point for each incident; on November 6, 2007, he was tardy and received one-half point; on November 9, 2007, he was absent and received one point; on November 12, 2007, he was tardy and received one-half point; and from December 4 through December 20, 2007, he was absent due to properly reported illness with a doctor's excuse and received two points but exceeded the allowed number of points and his employment was terminated. The claimant received a verbal warning November 15, 2007, and a final written warning November 20, 2007.

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). While the claimant did exceed the allowed number of attendance points, his last absence was due to a properly reported illness with a doctor's excuse; and although he only received two points for that approximate three-week absence, he still went over ten points. Because the final absence was related to properly reported illness, however, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits are allowed.

DECISION:

The January 16, 2007, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw