

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RAYMOND W FOWLER
1717 SUMMIT ST
SIOUX CITY IA 51105**

**SOO TRACTOR SWEEPRAKE CO INC
PO BOX 1283
SIOUX CITY IA 51102**

**Appeal Number: 04A-UI-04968-DWT
OC 04/11/04 R 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Soo Tractor Sweeprake Company, Inc. (employer) appealed a representative's April 27, 2004 decision (reference 01) that concluded Raymond W. Fowler (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2004. The claimant participated in the hearing. Mike Felts, a supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 20, 2003. The claimant worked as a full-time welder. Felts was his supervisor.

The claimant completed his 90-day probation on January 15, 2004. At that time, the employer gave him the employer's written policies and told him he needed to work on his attendance. One of the employer's rules required employees to notify the employer when the employee was unable to work as scheduled.

After the employer told the claimant he needed to work on his attendance, the claimant was 17 minutes late for work on January 23. The claimant called in sick on February 2. On February 13 and 16 he left work early with the employer's authorization. On March 5, the claimant became ill and left work early. The claimant did not work on March 30 or 31, but he had a doctor's excuse indicating he could not work these days because he was ill. The claimant worked as scheduled on April 2, 2004.

On Sunday, April 4, the claimant received an unexpected call that his grandmother had hurt herself and was being released from a hospital but could not return to the home she had been living in Rosebud, South Dakota. The claimant made arrangements to pick up his grandmother in South Dakota and meet his niece at a halfway location so she could take the claimant's grandmother to her home and take care of her. The claimant considered going to South Dakota to pick up his grandmother as a family emergency.

The claimant called his home Sunday night and left a message for his wife to call the employer before he was scheduled to work on Monday morning. The claimant assumed his wife would be home when he called or would be home shortly and would notify the employer that the claimant was unable to work on April 5. The claimant did not know his wife had to work an extra shift at the hospital where she worked. When she got home, she did not listen to the answering machine. She went to bed to sleep. Even though the claimant thought his wife would contact the employer to let them know he was unable to work on April 5, she did not.

When the claimant reported to work as scheduled on April 6, the employer discharged him for failing to call and report to work as scheduled on April 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant understood any time he was unable to work as scheduled, the employer required him to contact the employer. The facts indicate the claimant thought he made the necessary arrangements by leaving a message for his wife to contact the employer after he realized he would not be at work as scheduled on April 5. The facts also indicate the claimant unexpectedly left his home on Sunday, April 4, to pick up his grandmother in South Dakota. The claimant was the closest relative and was the only relative close enough to go to Rosebud and then meet his niece at a halfway location so she could take his grandmother the rest of the way to her home. Under the facts of this case, the claimant established reasonable grounds for not reporting to work on April 5. Also, he did not intentionally fail to notify the employer he was unable to work as scheduled on April 5. The claimant did not commit work-connected misconduct. Therefore, as of April 11, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 27, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons but these reasons do not constitute work-connected misconduct. As of April 11, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf