

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK J LABRUNE
Claimant

APPEAL NO. 06A-UI-11765-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOO TRACTOR SWEEPRAKE CO INC
Employer

OC: 11/12/06 R: 01
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated December 4, 2006, reference 01, which denied benefits based upon his separation from Soo Tractor Sweeprake Co., Inc. After due notice, a telephone conference hearing was scheduled for and held on December 21, 2006. The claimant participated. Participating as a witness for the claimant was Kirk Labrune, the claimant's father. The employer participated by Cindy Zeman. Exhibits A through H and Exhibits One and Two were received into evidence.

ISSUE:

At issue in this matter is whether Mr. Labrune was discharged for misconduct in connection with his employment.

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. Labrune was employed by Soo Tractor Sweeprake Co., Inc.-ADP from August 19, 2004 until November 11, 2006 when he was discharged from employment. Mr. Labrune held the position of production worker working from 7:00 a.m. until 3:30 p.m. Monday through Friday.

Mr. Labrune was discharged because of excessive absenteeism and tardiness. Under the employer's attendance system, employees are subject to discharge if they exceed the maximum number of attendance infraction points allowed under company policy. Mr. Labrune was aware of the policy and had been warned. The claimant was discharged after he accumulated 11 infraction points between January 13, 2006 and November 11, 2006. A number of the claimant's absences were related to the illness of himself and his child. The employee on many occasions had excused absences for emergency reasons. Absences that were properly reported to the employer in advance were not counted as infractions.

In addition to absences for medical reasons, Mr. Labrune was also absent because of transportation problems, personal time off requests without advanced permission and tardiness due to oversleeping. The claimant's final attendance infraction that resulted in his termination

occurred on November 10, 2006 when the claimant overslept and did not provide the required advanced notice of his impending absence or tardiness as required. Employees who are absent may choose to utilize accrued vacation time to receive payment for days that they do not report for work.

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 administrative law judge finds based upon the testimony of the witnesses and the evidence in the hearing record that the employer has sustained its burden of proof by a preponderance of the evidence in establishing that the claimant's discharge took place under disqualifying circumstances.

In this case the evidence establishes that Mr. Labrune had been absent or late on numerous occasions and had been warned by the employer prior to a separation from employment. In addition to being absent for reasons related to his health and the health of his child, Mr. Labrune was also absent due to transportation difficulties, his choice to take personal time off, and oversleeping. The final infraction that resulted in the claimant's discharge took place when the

claimant overslept and did not report for scheduled work or provide proper notification in advance on November 10, 2006. While it is clear the absence is related to the claimant's illness or the illness of his child and beyond the claimant's control, the evidence nevertheless establishes that a substantial number of attendance infractions took place due to issues of personal responsibility. Oversleeping or failing to have adequate transportation are the claimant's responsibility. Repeated attendance infractions for these reasons show a disregard for the employer's interests and reasonable standards of behavior. Therefore, the administrative law judge must conclude that the claimant's separation from employment was disqualifying.

DECISION:

The decision of the representative dated December 4, 2006, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs