

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J SALTZMAN
Claimant

APPEAL NO. 07A-UI-05864-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITH FERTILIZER & GRAIN CO
Employer

**OC: 05-31-07 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated May 31, 2007, reference 01, which held claimant eligible for unemployment insurance benefits based upon his separation from Smith Fertilizer & Grain Co. After due notice was issued, a telephone hearing was scheduled for and held on June 27, 2007. No postponement requests had been received and no postponements had been granted. Although duly notified of the time of hearing and method of hearing and the issue before the administrative law judge, the claimant was not available at the telephone number he provided for the hearing. The employer participated by Chris Overguard, Max Smith and Sharon Smith.

ISSUE:

The issues in this matter are whether the claimant was discharged for misconduct in connection with his work .

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 22, 2007 until May 16, 2007 when he was discharged for failure to report for scheduled work. Mr. Saltzman held the position of outside laborer and was employed on a full-time basis. His immediate supervisor was Chris Overguard.

Mr. Saltzman was discharged from his employment with Smith Fertilizer & Grain Co. after he failed to report to work or provide sufficient notification to the employer on May 14, 15, and 16, 2007. The claimant had previously received a job injury and had been off work with the authorization of the employer but had been released by his physician to return on May 14, 2007. The claimant did not return that day and did not provide any notification to the employer until the end of the work day. The claimant was specifically instructed by his supervisor, the location manager, Chris Overguard, to report for scheduled work the next day on May 15, 2007. Once again, Mr. Saltzman did not report and provided no notification to the employer. On Wednesday, May 16, 2007, the claimant once again was expected to report for work but did not do so and did not provide any notification to the employer until the end of the work day. The

claimant called at the end of the work day alleging that he had added a note to his doctor's release requesting that the company's owner, Max Smith, personally contact Mr. Saltzman. Mr. Smith did not receive any kind of notification from Mr. Saltzman in the form of a note or a personal communication. It was the employer's reasonable expectation that the claimant would follow the work directive given to him by the facility manager and report for scheduled work upon being released by his physician.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that Mr. Saltzman did not report for scheduled work and did not provide reasonable notification to the employer for three consecutive work days: May 14, 15, and May 16, 2007. The evidence in the record establishes that the claimant had been released to return to work on May 14, 2007 but did not do so and provided no notification to the employer. Although the claimant was specifically instructed to report the following day by the general manager, once again he did not do so and provided no notification. The third day, Wednesday, May 16, 2007, the claimant again did not report for scheduled work and did not notify the employer of his impending absence. When the claimant subsequently claimed that he had added a note to a doctor's release, the employer acted reasonably in investigating the matter and it specifically determined that no note was added to the doctor's release. The employer concluded based upon its investigation that Mr. Saltzman's reasons for not reporting back to work strained credibility. A decision was made to discharge the claimant for his conduct.

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.

For the reasons stated herein, the administrative law judge finds that the employer has sustained its burden of proof in establishing that the claimant's discharge took place due to intentional disqualifying misconduct.

Because the claimant received no benefits in connection with the unemployment insurance claim, there is no overpayment to address.

DECISION:

The representative's decision dated May 31, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct in connection with his work. 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