

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

MERLIN F KASS
3217 – 9TH ST
SIOUX CITY IA 51105

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

Appeal Number: 05A-UI-12092-DWT
OC: 10/30/05 R: 01
Claimant: Appellant (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 is 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:

Merlin F. Kass (claimant) appealed a representative's November 18, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Soo Tractor Sweeprake Company, Inc. – ADP (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2005. The claimant participated in the hearing. Cindy Zeman, the human resource manager, and Todd Mahaney 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 employer rehired the claimant on January 3, 2005. The employer hired the claimant to work full time as a forklift operator. The claimant's employment ended before because he was incarcerated on drug-related charges. The employer knew the claimant was on probation.

In late July, the claimant told his supervisor, Mahaney, he had slipped over the weekend and used drugs. Mahaney suggested that the claimant report this to his parole officer. The employer allowed employees to receive treatment under the employer's plan, but the claimant would be required to pay a portion of the treatment cost. If the claimant obtained treatment through a State program, he would not have to pay any money.

The claimant talked to his parole officer and learned that before he could get into the State program, his parole officer would have to get the claimant's parole revoked. The claimant decided he wanted to go to the State program, but understood he would enter the State treatment program immediately. On July 27, 2005, Mahaney allowed the claimant to leave work early so he could take care of personal matters before his parole was revoked.

On July 28, the claimant's parole was revoked and he was in jail. The claimant then learned he had to wait until there was an opening before he could enter the State's treatment program. The claimant asked his parole officer if he could get a work release while he waited to enter the treatment program. Nothing happened with this request. The claimant was in jail about a month before he was able to enter the treatment program.

On August 2, 2005, the employer terminated the claimant's employment because he did not call or report to work for three days. The claimant was unable to return to work until late October 2005. Even though the claimant's supervisor knew the claimant would be entering a treatment program, the claimant did not inform the employer he had to spend about a month in jail before he could get into a treatment program. The claimant did not request a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The employer discharged the claimant on August 2, 2005. The employer discharged the claimant for failing to work as scheduled. Even though the claimant was incarcerated so he could get into a state treatment program, the claimant had other alternatives available that may not have included incarceration. The evidence indicates the employer discharged the claimant because he was again incarcerated and unable to perform the work the employer hired him to do in January. While the results may seem harsh, the claimant's off duty conduct resulted in his incarceration so he could not work as the employer had hired him to do. Under these facts, the claimant committed work-connected misconduct. The claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 18, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of October 30, 2005. This disqualification continues until

he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/kjw