

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

MATTHEW A DENHAM
PO BOX 12
BLAKESBURG IA 52536-0012

CARGILL MEAT SOLUTIONS CORP
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-03596-CT
OC: 02/26/06 R: 03
Claimant: Respondent (2)

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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated March 14, 2006, reference 01, which held that no disqualification would be imposed regarding Matthew Denham's separation from employment. After due notice was issued, a hearing was held by telephone on April 18, 2006. The employer participated by Erica Bleck, Human Resources Associate. Exhibits One, Two, and Three were admitted on the employer's behalf. Mr. Denham did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Denham was employed by Cargill from July 11, 2005 until February 28, 2006 as a full-time production worker. He was discharged for giving false information on his pre-employment physical. One of the questions asked was whether he had ever had a knee injury or problem. Mr. Denham responded that he had not.

On February 22, 2006, Mr. Denham was seen by the company nurse. At that time, he indicated he had been having problems with his knee since he was age 14. He also told the nurse that his doctor said he might require surgery if his knee continued giving out. He indicated that the doctor said the problem was caused by the fact that the muscles on one side of his knee were too weak. Mr. Denham also told the nurse that he had a brace at home but sometimes forgot to wear it. As a result of his failure to disclose his knee injury, Mr. Denham was discharged on February 28, 2006.

Mr. Denham has received a total of \$1,596.00 in job insurance benefits since filing his claim effective February 26, 2006.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Denham was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Denham was discharged because he gave false information during his pre-employment physical. He failed to disclose a history of prior problems with his knee in spite of the fact that the question was specifically asked.

Where an individual provides false information on the application for hire, he is disqualified from receiving job insurance benefits if the falsification did or could have resulted in exposing the employer to legal liabilities or penalties. 871 IAC 24.32(6). The administrative law judge considers the physical exam and attendant documents to be part of the application process. Given his history of knee problems, the administrative law judge must presume that Mr. Denham intentionally failed to disclose the problem. The fact that he had prior problems with his knee would not have prevented him from being hired by Cargill. However, the employer had the right to the information in making placement decisions. The employer may well have placed him in a different job if it had known that his knee was already compromised. The failure to disclose the knee problem had the potential of subjecting the employer to worker's compensation liability if Mr. Denham re-injured his already unstable knee while working for Cargill.

The administrative law judge concludes that Mr. Denham's deliberate failure to disclose his prior knee problems constituted a substantial disregard of the standards an employer has the right to expect. Accordingly, benefits are denied. Mr. Denham has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated March 14, 2006, reference 01, is hereby reversed. Mr. Denham was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Denham has been overpaid \$1,596.00 in job insurance benefits.

cfc/tjc