

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG R EUROM
Claimant

APPEAL NO. 09A-UI-07091-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 04/05/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated April 28, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 16, 2009. Mr. Eurom participated personally. The employer participated by Mr. Tony Luse, Employment Manager. Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record finds: The claimant was employed as a full-time production worker for Swift & Company from July 24, 2008 until October 27, 2008, when he was discharged from employment.

The claimant was discharged when the company believed that he had provided false or incomplete information to the company on a pre-employment health questionnaire. Mr. Eurom had answered no to questions regarding previous injuries and illness relating to his knees and ribs. The claimant had listed numerous other previous injuries. The claimant did not list stitches that he had previously had some 12 years before to his knee and/or rib as he had essentially forgotten them and did not think they were consequential.

When Mr. Eurom reported to the company's medical facility with a knee injury and a shoulder injury, it was noted that claimant had a scar on his knee. Upon further inquiry, claimant remembered that he had received some stitches numerous years before and explained his failure to note the injury on his application for employment. As the employer considers information of this nature to be crucial, a decision was made to terminate the claimant from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to deny unemployment insurance benefits. It does not.

The evidence in the record does not establish that the claimant intentionally withheld or provided false information to the company with respect to injuries or illness prior to employment. Claimant listed numerous other injuries on his application for employment, but neglected to list stitches that he had in his knee some 12 years before as he had essentially forgotten the incident and did not believe it was serious enough to warrant disclosure in comparison with other injuries that he had listed. Because this information is important to the company in assessing whether employees should be hired, a decision was made to terminate Mr. Eurom from his employment because he did not list the injuries.

The question before the administrative law judge in this case is not whether the employer has the right to discharge the employee for these reasons, but whether the claimant's conduct rose to the level of intentional disqualifying misconduct that would warrant a disqualification for unemployment insurance benefits. While the decision to terminate Mr. Eurom may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant's omission was not due to intentional misconduct sufficient to warrant denial of benefits.

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.

DECISION:

The representative's decision dated April 28, 2009, reference 01, is affirmed. Claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/pjs