

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID W SWAFFORD

Claimant

APPEAL NO. 08A-UI-10493-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRANSPORT LOADING SERVICES INC

Employer

**OC: 10/12/08 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Transport Loading Services, Inc. filed an appeal from a representative's decision dated November 3, 2008, reference 01, which held that no disqualification would be imposed regarding David Swafford's separation from employment. After due notice was issued, a hearing was held by telephone on November 24, 2008. Mr. Swafford participated personally. The employer participated by Sandy Loney, Director of Human Resources, and Doreen Coppinger, Benefits Manager. The employer was represented by William Fairbank, Attorney at Law. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Swafford was separated from employment for any disqualifying reason.

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. Swafford was employed by Transport Loading Services, Inc. from November 21, 2003 until October 10, 2008. He worked full time as a tarper and loader. He was discharged because he failed to disclose a prior injury at the time of hire.

Mr. Swafford completed a "Confidential Medical Questionnaire" on November 21, 2003. One of the questions asked is "Do you have or have had other injuries or illnesses not on the job (home, auto, sports, hunting, etc.) which have resulted in hospitalization, surgery, or lost work time." Mr. Swafford checked "yes" and disclosed an injury to his right hand in 2003 that caused him to miss a week of work. He did not disclose any other injury in that section of the form.

On or about August 27, 2008, Mr. Swafford sustained a back injury at work. During a fitness-for-duty exam, he gave notice that he had suffered a torn tendon in his left knee. The injury occurred ten years ago while he was playing football in high school. He did not require surgery or hospitalization. He did not miss any time from playing football as a result of the injury. He underwent physical therapy and has not had any problems with the knee since that time.

When the employer learned of Mr. Swafford's prior injury, it was noted that he had not disclosed the injury on the questionnaire he completed at the time of hire. The failure to disclose was considered falsification of the application and, therefore, he was discharged on October 10, 2008. The above matter was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

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. Swafford was discharged based on an allegation that he falsified his application for hire by not disclosing his prior knee injury. After reviewing the application and the testimony, the administrative law judge concludes that he did not falsify the application.

The questionnaire did not ask Mr. Swafford to list every illness or injury he had ever had. It only asked him to disclose those that resulted in surgery, hospitalization, or lost work time. The employer did not offer any evidence to refute Mr. Swafford's testimony that the injury to his knee did not result in surgery, hospitalization, or lost time from work. Since the wording of the question did not require disclosure of his high school injury, his failure to do so did not constitute a falsification. Inasmuch as this was the sole reason for the discharge, it must be concluded that misconduct has not been established. As such, the decision allowing benefits shall be affirmed.

DECISION:

The representative's decision dated November 3, 2008, reference 01, is hereby affirmed. Mr. Swafford was discharged, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw