

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON COLLINS
Claimant

APPEAL NO: 10A-UI-08384-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 05/09/10
Claimant: Appellant (4)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Jason Collins (claimant) appealed an unemployment insurance decision dated June 3, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Swift & Company (employer) for work-related misconduct. Due notice was issued scheduling the matter for a telephone hearing to be held July 29, 2010. Both parties responded to the hearing notice instructions but no hearing was necessary as the decision was able to be made based upon the evidence in the record by agreement of the parties. Based on the information from the parties and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant was employed from October 15, 2007 through May 13, 2010 when he was discharged for falsification of his employment application because he failed to disclose a prior medical surgery. The parties settled on the matter and the claimant returned to work on July 20, 2010. The employer does not contest the claimant's unemployment benefits from May 13, 2010 to July 20, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on May 13, 2010 but he returned to work for this employer on July 20, 2010. The employer is not contesting the claimant's unemployment benefits for this period of time. Consequently, work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed from May 15, 2010 to July 17, 2010.

DECISION:

The unemployment insurance decision dated June 3, 2010, reference 01, is modified in favor of the appellant. The claimant was discharged. Misconduct has not been established. Benefits are allowed from May 15, 2010 to July 17, 2010, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs