

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIM T DAVIS
Claimant

APPEAL NO: 09A-UI-18555-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY / JBS
Employer

OC: 12/21/08
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Swift & Company / JBS (employer) appealed a representative's December 2, 2009 decision (reference 03) that concluded Jim T. Davis (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2010. The claimant participated in the hearing. Tony Luse 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 16, 2009. He worked full time as a production worker in the employer's Marshalltown, Iowa pork processing facility. His last day of work was November 12, 2009. The employer discharged him on that date. The reason asserted for the discharge was failing to disclose a prior injury on his pre-employment medical form.

The claimant had completed a pre-employment application including a medical form. One of the questions on the medical form was whether the claimant had suffered any prior injuries or illnesses; he had answered "no." In fact, the claimant had been diagnosed and treated in about January 2008 with tendonitis. He did not report this as he was not suffering from the condition at the time he applied and did not believe the prior condition bore on his employability with the employer; he was more concerned that the employer would choose not to hire him if he had prior medical conditions. The employer asserted that had the claimant disclosed the condition, he would have been sent to the doctor to obtain a release as to what work in the facility the claimant could do.

In early October 2009 the claimant had an accident at work and began to suffer pain in his fore arm and wrist. Shortly before November 12 the employer's nurse's office sent him to the doctor.

The claimant discussed his prior tendonitis with the doctor; the doctor indicated that the claimant appeared to again be suffering from tendonitis. When the claimant returned to the employer's facility, he reported this discussion to the nurse, who reported to management that claimant had failed to report his prior tendonitis.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failure to report his prior tendonitis on the employer's pre-employment medical form. However, the mere failure to provide full and accurate information on the form is not automatically misconduct. The false statement must endanger the health, safety or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties or result in placing the employer in jeopardy. There is some concern that aggravation of a prior condition could expose the employer to worker's compensation liability. However, the Iowa court has ruled that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Although the court did not define materiality, it cited Independent School District v. Hanson, 412 N.W.2d 320 (Minn. App. 1987), which stated that a misrepresentation is not material if a truthful answer would not have prevented the person from being hired. Here, had the claimant answered the question yes, it does not appear that he would have been prevented from being hired. Therefore, the administrative law judge concludes that the claimant's act of falsification on his pre-employment medical form was not misconduct and, as a consequence, he is not disqualified for unemployment insurance benefits. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based

upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 2, 2009 decision (reference 03) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs