

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J STORJOHANN
Claimant

APPEAL NO. 08A-UI-05135-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 05/04/08 R: 02
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Storjohann filed an appeal from a representative's decision dated May 27, 2008, reference 01, which denied benefits based on his separation from Swift & Company. After due notice was issued, a hearing was held on June 16, 2008, in Des Moines, Iowa. Mr. Storjohann participated personally. The employer participated by Tony Luse, Employment Manager.

ISSUE:

At issue in this matter is whether Mr. Storjohann 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. Storjohann was employed by Swift from February 19, 2007 until April 28, 2008 as a full-time production worker. He sustained a cut on his finger at work on April 21, 2008. As a result, he was required to undergo a post-accident drug screen. An in-house drug test indicated the presence illicit drugs in his system. He was taken to the hospital by a member of health services at approximately 4:00 p.m. and left there for further drug testing and treatment. When the member of health services returned to get him at a later point, Mr. Storjohann could not be found.

Mr. Storjohann returned to the workplace at approximately 6:45 p.m. He had walked five blocks from the hospital to a local bar, where he remained approximately 20 minutes, and then five additional blocks from the bar to Swift. When he told the employer he had stopped by a bar before returning to work, he was suspended pending a further determination. He was notified on April 28 that he was being discharged for drinking on the job. Mr. Storjohann was discharged solely because he was drinking during work hours after leaving the hospital on April 21.

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. Storjohann was discharged because he went to a bar during work hours. He contended during the hearing that he only consumed a soft drink while at the bar. The employer did not present evidence from any individual who actually saw him consuming alcohol at the bar. However, the administrative law judge is inclined to believe that he was, in fact, consuming alcohol at the bar. If an individual reports to work under the influence of an illicit drug, it is likely that this same individual would also consume alcohol while on duty.

Mr. Storjohann had no reason to go to the bar on April 21 since he was still on work time. He certainly had no reason to remain for 20 minutes before reporting back to work. Consuming alcohol while still on the clock is clearly contrary to the type of behavior an employer has the right to expect. After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving that Mr. Storjohann was discharged for misconduct and should be disqualified from receiving job insurance benefits.

DECISION:

The representative's decision dated May 27, 2008, reference 01, is hereby affirmed. Mr. Storjohann was discharged by Swift 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw