

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES D DERBY
Claimant

APPEAL NO. 09A-UI-05059-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 03/01/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Derby filed an appeal from a representative's decision dated March 23, 2009, reference 01, which denied benefits based on his separation from Cargill Meat Solutions Corporation (Cargill). After due notice was issued, a hearing was held by telephone on April 28, 2009. Mr. Derby participated personally. The employer participated by Alicia Alonzo, Human Resources Generalist, and Dana Trout, Nurse.

ISSUE:

At issue in this matter is whether Mr. Derby 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. Derby was employed by Cargill from January 14 until February 18, 2009 as a full-time production worker. He was assigned to the cut floor where he used knives to perform his job. He was discharged for falsifying his pre-employment health questionnaire. The applicant completes the questionnaire and it is then reviewed with him by the company nurse. Mr. Derby completed the questionnaire on January 6, 2009 and responded "no" to the question that asked if he had ever experienced blackouts.

Mr. Derby went to the employer's health services on February 18 where he reported that he was afraid he was going to blackout again. According to notes made by the nurse, Mr. Derby reported that he had experienced a blackout at home two weeks earlier. He also reported that he had experienced them periodically since the first one at age 16 but had not seen a doctor regarding the condition. Because he failed to disclose the blackouts on his health questionnaire, Mr. Derby was discharged on February 18, 2009. 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. Mr. Derby was discharged for failing to disclose his true medical history. He told the company nurse on February 18 that he had been experiencing blackouts periodically for the past four years. Therefore, his response on the questionnaire that he did not have any history of blackouts was clearly incorrect. He intentionally failed to disclose the fact that he had experienced blackouts in the past.

Not every deliberate falsification during the application process will result in disqualification from job insurance benefits. The falsification must result in some harm or potential harm to the employer or others. 871 IAC 24.32(6). Mr. Derby worked on the cut floor using a knife and around other sharp instruments. If he experienced a blackout on the cut floor, he could have harmed himself by falling onto a sharp instrument. He could also have harmed others if he blacked out with a knife in his hands. Had he harmed himself or others, the employer would be faced with possible legal liability.

For the reasons cited herein, the administrative law judge concludes that Mr. Derby's deliberate falsification of his health questionnaire constituted a substantial disregard of the employer's interests and standards. As such, he is disqualified from receiving job insurance benefits.

DECISION:

The representative's decision dated March 23, 2009, reference 01, is hereby affirmed. Mr. Derby was discharged for misconduct in connection with his employment with Cargill. Benefits are withheld until 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/pjs