

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LONG NFN
911 N 5TH AVE
MARSHALLTOWN IA 50158

SWIFT & COMPANY
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-10515-CT
OC: 08/29/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Long (NFN) filed an appeal from a representative's decision dated September 21, 2004, reference 03, which denied benefits based on his separation from Swift & Company. After due notice was issued, a hearing was held by telephone on October 20, 2004. Mr. Long participated personally. The employer participated by Jeremy Cook, Human Resources Manager. Tom Baccam participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Long was employed by Swift from March 29 until

August 26, 2004 as a full-time production worker. He was discharged after his second violation of the employer's drug and alcohol policy.

On June 19, 2004, Mr. Long was suspended for one week after he reported to work under the influence of alcohol. He was told that he would be discharged if such conduct occurred again. On August 13, it was noted that Mr. Long smelled of alcohol. His eyes were glassy and half-closed. His gait was unsteady and he swayed when he stood in one place. It was also noted that his speech was slurred. The employer felt there was reasonable suspicion to test Mr. Long for alcohol. He was tested in the employer's health services office. His alcohol level exceeded the legal limit for operating a motor vehicle. He was suspended on August 13 and notified of his discharge on August 26, 2004. His violations of the employer's drug and alcohol policy was the sole reason for the discharge. Mr. Long acknowledged that he had consumed a lot of beer the night before he reported for work on August 13.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Long was separated from employment for any disqualifying reason. 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. Long was discharged after he twice violated the employer's alcohol policy. He knew from the disciplinary suspension in June that such conduct was contrary to the employer's standards and could result in his discharge. In spite of the prior warning, he again reported to work under the influence of alcohol on August 13. Mr. Long worked in a production area using a knife. As such, his conduct in being at work under the influence of alcohol had the potential to cause harm to himself or others.

After considering all of the evidence, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated September 21, 2004, reference 03, is hereby affirmed. Mr. Long 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.

cfc/b