

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY S MILLER
Claimant

APPEAL NO. 09A-UI-05001-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON RETAIL DELI MEATS INC
Employer

OC: 02/01/09
Claimant: Appellant (1)

Section 96.5(2)a - Discharge for Misconduct

STATEMENT OF THE CASE:

Kelly Miller filed an appeal from a representative's decision dated March 17, 2009, reference 02, which denied benefits based on her separation from Tyson Retail Deli Meats, Inc. (Tyson). After due notice was issued, a hearing was held by telephone on April 27, 2009. Ms. Miller participated personally. The employer participated by Lisa Hillman, Human Resources Specialist.

ISSUE:

At issue in this matter is whether Ms. Miller 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: Ms. Miller was employed by Tyson from September 23, 2008 until February 3, 2009 as a full-time laborer. She was discharged for failing to fully disclose her medical history. She completed a health assessment on September 17, 2008 that asked questions about her medical history. One of the questions was whether she had ever had any problems associated with her back. Ms. Miller checked the "no" response.

On or about February 3, 2009, Ms. Miller complained that a work-related task was causing her back problems. It was at that time that she disclosed to the employer that she had sustained an injury to her back in an accident in 2004. At the time of the accident, she was diagnosed as having fractures in the lumbar spine. She had been released to work without restrictions at the time she was hired by Tyson.

Ms. Miller felt that a full disclosure of her medical history might have resulted in her not being hired by Tyson. Disclosure of the true medical history would not have prevented her from being hired but the information would have been used in making placement decisions. As a result if the failure to disclose her prior back injury, Ms. Miller was discharged on February 3, 2009. The above matter was the sole reason for the separation.

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. Ms. Miller was discharged for providing false information on her health assessment. The fact that she felt she would not be hired if she disclosed her prior back problems suggests that she considered disclosing the true history. The fact that she did not do so establishes that she deliberately failed to disclose. The question asked was whether she had ever had prior back problems. She had the choice of answering “yes” or “no.” The choice to answer “no” when the true answer was “yes” constituted a falsification.

Not every deliberate falsification will result in disqualification from job insurance benefits. The falsification must result in some actual or potential harm to the employer or others. See 871 IAC 24.32(6). In the case at hand, Ms. Miller’s falsification had the potential of endangering her own health as well as exposing the employer to legal liability. By not knowing her true medical history, Tyson may have placed her in a job that caused re-injury and/or permanent damage to her back. As such, Tyson might be faced with an unwarranted worker’s compensation claim. For the reasons cited herein, it is concluded that Ms. Miller’s deliberate falsification constituted misconduct within the meaning of the law. Accordingly, benefits are denied.

DECISION:

The representative’s decision dated March 17, 2009, reference 02, is hereby affirmed. Ms. Miller was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css