

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL M DITMARSON
Claimant

APPEAL NO. 09A-UI-04205-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 01/25/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Daniel Ditmarson filed an appeal from a representative's decision dated March 11, 2009, reference 02, which denied benefits based on his separation from Swift & Company. After due notice was issued, a hearing was held on April 14, 2009 in Des Moines, Iowa. Mr. Ditmarson participated personally. The employer participated by Tony Luse, Employment Manager.

ISSUE:

At issue in this matter is whether Mr. Ditmarson 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. Ditmarson was employed by Swift from December 11, 2006 until January 29, 2008. He worked full time as a production worker. He was discharged for violating the employer's drug and alcohol policy.

On January 14, 2008, Mr. Ditmarson was asked to undergo a drug screen because the employer suspected he was at work under the influence of drugs or alcohol. It was noted that his eyes were glassy, his face flushed, and his speech slurred. It was also observed that he had mood swings and was paranoid and extremely sensitive. The January 14 testing was done by the employer's EMT. If an employee disputes the findings made by the EMT, the specimen is sent for further testing at an independent lab.

After Mr. Ditmarson gave a urine sample on January 14, it was noted to be 92 degrees and pale yellow in color. The contents came to just below the green line on the cup. The initial test was positive for cocaine and Mr. Ditmarson requested further testing. While the EMT was getting the necessary paperwork to send the specimen for further testing, he could hear the lid on Mr. Ditmarson's specimen cup snap shut. Mr. Ditmarson's hand was observed on the lid of the cup. Upon observation, the color of the urine was clear and the temperature was 90 degrees. There was also more urine in the cup than before. It was concluded that Mr. Ditmarson had

tampered with the specimen. He was given the opportunity to provide another urine specimen but refused.

Mr. Ditmarson was suspended on January 14 and notified of his discharge on January 29, 2008. His conduct in adulterating the initial test and his refusal to submit a second urine specimen were the reasons 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. Ditmarson was discharged for violating the employer's drug and alcohol policy. Based on the employer's observations of him, the drug testing conducted on January 14 was authorized by Iowa Code section 730.5(8)c. The administrative law judge is satisfied from the evidence that Mr. Ditmarson did, in fact, adulterate the initial urine sample, probably by adding water. He was observed with his hand on the specimen cup while others were out of the area. There would be no explanation for the change in color, temperature, and volume of his urine sample other than adulteration.

Mr. Ditmarson's conduct in adulterating his urine specimen during a drug test compromised the employer's efforts to provide a drug-free workplace. He could have provided a second urine sample so as to be in compliance with the employer's expectations but refused to do so. He knew or should have known that a refusal to undergo drug testing could result in his discharge. For the reasons cited herein, the administrative law judge concludes that Mr. Ditmarson's conduct of January 14, 2008 constituted substantial misconduct. As such, benefits are denied.

DECISION:

The representative's decision dated March 11, 2009, reference 02, is hereby affirmed. Mr. Ditmarson was discharged by Swift for misconduct in connection with his employment. Benefits are denied 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/css