

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANYA L COLLETT**  
Claimant

**APPEAL NO: 09A-UI-06563-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 05/11/08**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Swift & Company, now known as JBS (employer)) appealed a representative's April 15, 2009 decision (reference 04) that concluded Tanya L. Collett (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2009. The claimant received the hearing notice and responded by calling the Appeals Section on April 30, 2009. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. Tony Luse appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 2, 2008. She worked full time as a production worker on the second shift in the employer's Marshalltown, Iowa facility. Her last day of work was March 21, 2009. The employer discharged her on that date. The reason asserted for the discharge was failing to disclose some prior health issues regarding her back and knees on her job application.

Approximately the week prior to March 21 the claimant complained to the employer's nurse of back pain. In taking further medical information, the claimant indicated that she had a prior chronic back issue about six years prior and had some knee problems when she was in sixth grade. The claimant had answered "no" on the medical questions about whether she had any prior injuries. Had the claimant answered "yes," she would not have been denied employment, but further questions would have been asked to ensure that she was not placed into a job that might aggravate prior injuries. She indicated she had not answered yes because she did not think that chronic or such old issues were included.

The claimant is currently not receiving unemployment insurance benefits due to a separate representative's decision issued on April 22, 2009 (reference 05) which concluded she was not able and available for work as of April 4, 2009.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her failure to include reference to her six-year-old chronic back issue and her sixth grade knee problem on the medical questionnaire portion of her job application. Misconduct connotes volition. Huntoon, supra. It does not appear that claimant intentionally failed to mention the six-year-old chronic condition or her sixth grade knee issue, as she believed in good faith those were not the kind of injuries being sought. Cosper, supra. Further, in order for a false statement on a job application to be misconduct, the false statement must endanger the health, safety or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties or result in placing the employer in jeopardy. Here there would be some potential liability on the employer should it aggravate a prior condition. However, the Iowa court has ruled that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Although the court did not define materiality, it cited Independent School District v. Hanson, 412 N.W.2d 320 (Minn. App. 1987), which stated that a misrepresentation is not material if a truthful answer would not have prevented the person from being hired. Here, the claimant's answer would not have prevented her from being hired. Therefore, the administrative law judge concludes that the claimant's act of falsification on her application was

not misconduct and, as a consequence, she is not disqualified for unemployment insurance benefits due to the separation from employment.

**DECISION:**

The representative's April 15, 2009 decision (reference 04) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant would be qualified to receive unemployment insurance benefits, if she were otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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