

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA D KING
Claimant

APPEAL NO. 08A-UI-01262-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

**OC: 01/06/08 R: 03
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cargill Meat Solutions Corporation (Cargill) filed an appeal from a representative's decision dated January 25, 2008, reference 01, which held that no disqualification would be imposed regarding Melissa King's separation from employment. After due notice was issued, a hearing was held by telephone on February 20, 2008. Ms. King participated personally. The employer participated by Katie Holcomb, Human Resources Manager. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. King 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. King began working for Cargill on March 20, 2007 as a full-time production worker. Prior to her hire, she completed a medical questionnaire on February 16, 2007. She answered "yes" in response to the question as to whether she had any fracture, dislocation, or broken bone. She indicated she had fractured her left ankle 17 years prior. Ms. King indicated "no" in response to the question as to whether she had ever had a wrist, knee, elbow, or shoulder injury or problem. She did indicate that she had strained or sprained both ankles as a child.

On or about December 20, Ms. King fell at work and was seen in medical services. She indicated she believed she had dislocated her shoulder when she fell forward and caught her arm on the conveyor. She told the nurse that she had dislocated her shoulder as a teenager and that it popped in and out a lot of times over the course of a year and a half. Management became aware of the prior problems on about December 26. Ms. King indicated that she did not list the prior problem with her shoulder because it did not result from an injury and because it had never caused her any problems. She never had medical treatment for either shoulder. As a result of her failure to disclose the prior problems when completing the medical

questionnaire in February, Ms. King was discharged on December 26, 2007. 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. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. King was discharged for failing to provide complete information on a medical questionnaire, which was part of the employment application process. An individual is disqualified from receiving job insurance benefits if she deliberately and willfully falsified the application for hire and that falsification did or could have resulted in harm to the employer. See 871 IAC 24.32(6).

The threshold requirement for a disqualification under 871 IAC 24.32(6) is that the falsification must have been deliberate. The administrative law judge cannot conclude that Ms. King deliberately failed to disclose prior problems with her shoulder. She disclosed the fact that she had fractured her ankle 17 years prior and that she had either strained or sprained both ankles as a child. Since she disclosed these injuries, there would seemingly be no reason not to disclose the shoulder problem.

The administrative law judge believes Ms. King had a good-faith belief that the problems she had with her shoulder in the past were not the type of problem or injury that was being asked about on the questionnaire. She had a problem with the shoulder slipping in and out of the socket for a period of time but the problem was not due to any traumatic injury and did not require medical treatment. Given her good-faith belief, the administrative law judge concludes that Ms. King's omission of the prior shoulder problems did not constitute a willfully false statement.

For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated January 25, 2008, reference 01, is hereby affirmed. Ms. King was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs