

2001 until August 22, 2005. She was employed full time as a sales associate in the deli. The employer has a work rule, of which Ms. Wilson was aware, that prohibits deli associates from eating or "grazing" while working.

Another associate working in the deli reported to management that Ms. Wilson was eating food in the deli. When questioned, Ms. Wilson indicated she had eaten different chicken items approximately two times each week over the preceding six months. She indicated to the employer that she was eating food items to test the grease level. As a result of her acknowledged violation of the employer's rule, Ms. Wilson was discharged on August 22, 2005.

Ms. Wilson has received a total of \$1,626.00 in job insurance benefits since filing her claim effective September 4, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Wilson 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). Ms. Wilson was discharged for eating food in the deli where she worked. The administrative law judge did not find her testimony credible as to what items she was eating. She testified that she was only eating the breading that had fallen from chicken pieces. The administrative law judge is not inclined to believe that her coworker would report her for eating crumbs of breading. Moreover, it does not appear that she told the employer she was only eating breading.

Ms. Wilson knew that eating food while working was prohibited. If employees eat food while working and without making payment for it, it decreases the employer's profits for the deli. It is, in essence, theft from the employer as the food has monetary value. Ms. Wilson's intentional violation of the employer's work rule constituted a substantial disregard of the standards the employer had the right to expect and that she knew were expected of her. It is concluded, therefore, that disqualifying misconduct has been established by the evidence and benefits are denied.

Ms. Wilson has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated September 22, 2005, reference 01, is hereby reversed. Ms. Wilson was discharged for misconduct in connection with her employment. Benefits are withheld until such time as 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. Ms. Wilson has been overpaid \$1,626.00 in job insurance benefits.

cfc/kjw