

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SEMSA OSMANCEVIC
2713 ALLISON AVE
DES MOINES IA 50310

FOODS INC
4343 MERLE HAY RD
DES MOINES IA 50310

Appeal Number: 04A-UI-12358-CT
OC: 10/17/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Semsa Osmancevic filed an appeal from a representative's decision dated November 2, 2004, reference 01, which denied benefits based on her separation from Foods, Inc. After due notice was issued, a hearing was held by telephone on December 13, 2004. Ms. Osmancevic participated personally. The employer participated by Eric Gaffney, Assistant Manager. Zeljka Krvavica participated as the interpreter.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: The representative's decision which is the subject of this appeal was mailed to Ms. Osmancevic at her address of record on November 2, 2004. She received the decision. She is Bosnian and, due to her limited English abilities, she had her children read it for her. She was not aware that there was an appeal deadline until advised of it by her local Workforce Development office. Ms. Osmancevic filed an appeal on November 18, 2004.

Ms. Osmancevic was employed by Foods, Inc. from March 4, 2003 until August 21, 2004 as a part-time deli worker. She was discharged after she attempted to remove two bags of apples from the store. As she was leaving work on August 20, the employer checked Ms. Osmancevic bags and discovered that she had chicken and two bags of apples for which she did not have a receipt. When questioned, she indicated that the supervisor had given her permission to take the items home. When the employer checked with the supervisor, she denied having given permission.

The employer sometimes has produce that is no longer suitable for sale to the public. These items are taken to the deli and bakery areas to see if they can be used. A supervisor has to approve the removal of any items by employees, even if those items appear destined to be thrown away. Because Ms. Osmancevic did not have permission to remove any food items from the store, she was discharged on August 21, 2004. The above incident was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Ms. Osmancevic's appeal should be considered timely filed as required by Iowa Code section 96.6(2). Although she received the disqualifying decision, she was unable to read it because of a language barrier. Because of her difficulty with the English language, the decision was not effective to put Ms. Osmancevic on notice as to her rights. Therefore, the appeal filed on November 18, 2004, shall be considered timely filed.

The next issue in this matter is whether Ms. Osmancevic 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. Osmancevic was discharged because she attempted to remove product from the store without permission and without making payment for it. She denied that she had any chicken in her bag on August 20 but acknowledged that she did have two bags of apples that she did not pay for. The unauthorized removal of product constituted theft of property belonging to the employer. Theft from one's employer is clearly contrary to the type of behavior an employer has the right to expect. It is concluded, therefore, that the employer has established disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated November 2, 2004, reference 01, is hereby affirmed. Ms. Osmancevic 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.

cfc/pjs