

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA VOCKINGS

Claimant

APPEAL NO: 11A-UI-05287-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CDS GLOBAL INC

Employer

OC: 03-20-11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 11, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 16, 2011. The claimant participated in the hearing with Attorney Justin Gross. John Noll, employee relations manager; Shannon Parish, senior customer service manager; and Paula Slagle, customer service manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for CDS Global from August 18, 1997 to March 22, 2011. On March 21, 2011, an employee reported that her lunch had been stolen from one of the two refrigerators in the break room. She brought a Banquet frozen dinner of chicken fried steak, mashed potatoes and corn, and also had a can of Sprite and a fruit cup in a tan Hy-Vee plastic bag. The employer had experienced three other similar reports in the last two and one-half years and, as a result, installed a hidden color video surveillance system trained on the refrigerators. After receiving the report of the missing lunch, the employer reviewed the videotape and observed an individual who was clearly the claimant look in first one refrigerator and then the other and then remove a tan Hy-Vee plastic sack from the second one. The employer asked security to pull up the video of the claimant entering the building when she arrived for work that morning and noted she was only carrying a purse that was not large enough to contain the frozen dinner, can of soda and fruit cup and that she did not have a plastic bag of any kind with her. The employer watched the video again and after the claimant left for the day it went and looked in the trash receptacle she shared with another employee and found the empty Banquet frozen dinner box that had held chicken fried steak, mashed potatoes and corn, as well as a can of Sprite and an empty fruit cup container. On March 22, 2011, the employer met with the claimant about the incident. It asked her what time she took her lunch break and what she had to eat. The claimant stated she went to lunch

between 11:30 and 11:45 a.m. and consumed a frozen TV dinner and can of Sprite she brought from home. It showed her the contents of her wastebasket and asked if the empty containers were hers and she stated they were but she kept several Banquet frozen dinners in the freezer and did not know for sure what kind she grabbed and brought to eat the day before. The claimant indicated she always used Wal-Mart bags when she brought her lunch; and when asked if she took the other employee's lunch, she said she may have made a mistake between her lunch and the other employee's lunch, although there were no other frozen dinners in a white bag in either of the refrigerators. The employer has a zero tolerance for theft. After viewing the videotape and the contents of the claimant's trash basket, and interviewing the claimant, the employer terminated her employment for theft.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

While the claimant maintains she did not take her co-worker's lunch, the evidence suggests she did so. The claimant testified she went out to her car during her first break between 9:15 and 9:30 a.m. because she left her lunch in a Hy-Vee bag in the passenger seat, yet she did not tell the employer that at the time of termination; and when the employer checked the video, it did not show her exiting and reentering the building around that time. She stated she put her lunch

in the bigger refrigerator, as she usually did, but could not explain why she checked the smaller refrigerator first or how the lunch that was stolen was the same as her lunch, with the exception of the fruit cup, which she denied having in her lunch but was in her wastepaper basket. The claimant also testified she called her husband before her lunch break to ask him what Banquet meals were left in their freezer because she did not know what she pulled out of the freezer that morning but did not tell the employer about the call at the time of her termination. The claimant's explanations are less credible than the employer's video, interview, and witness' evidence. Consequently, the administrative law judge must conclude the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are be denied.

DECISION:

The April 11, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw