

**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**

**HEATHER L HILDRETH
4209 E OVID AVE
DES MOINES IA 50317**

**FOODS INC
4343 MERLE HAY RD
DES MOINES IA 50310**

**Appeal Number: 05A-UI-02277-CT
OC: 01/23/05 R: 02
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Heather Hildreth filed an appeal from a representative's decision dated February 23, 2005, reference 02, which denied benefits based on her separation from Foods, Inc. After due notice was issued, a hearing was held by telephone on March 22, 2005. Ms. Hildreth participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Hildreth was employed by Foods, Inc., doing business

as Dahl's Foods, from October 10, 2004 until January 9, 2005 as a waitress and cafeteria clerk. She averaged approximately 32 hours of work each week. On January 6, an off-duty cafeteria worker came to the cafeteria and prepared a meal for herself. Ms. Hildreth had observed other employees, primarily managers, prepare their own meals. She did not seek payment from the coworker for the meal. She believed the coworker was going to ring up her own meal. Although the employer has a policy prohibiting employees from ringing up their own purchases, Ms. Hildreth had seen others do this on prior occasions. A manager was in the cafeteria eating at the time the coworker made her meal and consumed it without payment. Because Ms. Hildreth did not attempt to prevent the employee from preparing her meal and did not report the conduct to a manager, she was discharged.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hildreth 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). For reasons which follow, it is concluded that the employer has failed to satisfy its burden of proof. There was no evidence that Ms. Hildreth was a party to her coworker's actions. She did observe the coworker prepare her own meal. However, it seems that it was not out of the ordinary for employees to prepare their own meals. She assumed that the employee had or was going to make payment. Therefore, she did not knowingly allow the meal to be eaten without payment. Moreover, there was a manager in the cafeteria at the time the incident took place.

After considering all the evidence, the administrative law judge concludes that the employer has failed to establish that Ms. Hildreth deliberately or intentionally acted in a manner she knew to be contrary to the employer's interests or standards. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 23, 2005, reference 02, is hereby reversed. Ms. Hildreth was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf