

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAMELA HALE**  
Claimant

**APPEAL NO. 12A-UI-03184-H**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOODS INC**  
Employer

**OC: 02/05/12  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Pamela Hale, filed an appeal from a decision dated March 20, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on May 1, 2012. The claimant participated on her own behalf and was represented by Eric Rufer. The employer, Foods Inc., was paged in the main waiting area at 10:59 a.m. and at 11:19 a.m. No one was present and the employer did not participate. Exhibit A was admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct serious enough to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Pamela Hale was employed by Foods Inc. from October 2011 to January 25, 2012 as a part-time cashier. She had received a copy of the employee handbook at the time of hire. One of the provisions states an employee may be disciplined up to and including discharge for taking food and eating it before paying for it.

On January 25, 2012 Ms. Hale had a 15-minute break. She went to the deli, ordered a chicken leg, and asked that the label with the UPC code be placed on her hand rather than the container. She went to the cashier line to pay for it but found a very long line. Since she had such a limited period of time to take her break she notified the cashier, showed her the UPC label and said she would pay for the food later. She had done this on previous occasions when managers were present.

Ms. Hale did pay for the chicken when she returned from her break but was discharged by Store Manager Kevin Helm for violation of the company policy.

## REASONING AND CONCLUSIONS OF LAW:

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.

The claimant does not deny that she took and ate the food before she paid for it. Although she had received the handbook outlining the procedure against this type of conduct she had not read it and did not know it was a dischargeable offense. No manager, who had seen her do similar things in the past, had ever advised her against this course of action. There is evidence she did pay for it and the only reason she did not pay for it ahead of time is that she would have spent her entire 15-minute break waiting in line to get to the cashier. There is no evidence of a willful and deliberate attempt to steal from the company or defraud it in any way merely an attempt to be able to take her break and eat some food at the same time. The administrative law judge cannot conclude this rises to the level of substantial job-related misconduct and disqualification may not be imposed.

**DECISION:**

The representative's decision of March 20, 2012, reference 01, is reversed. Pamela Hale is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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