

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY L MANHART
Claimant

APPEAL NO. 11A-UI-05112-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/13/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cathy Manhart filed an appeal from a representative's decision dated April 6, 2011, reference 01, which denied benefits based on her separation from Hy-Vee, Inc. After due notice was issued, a hearing was held on July 5, 2011 in Des Moines, Iowa. Ms. Manhart participated personally. The employer participated by Darin Casey, manager of store operations; Heather Walker, human resources manager; and Kim Meyers, assistant manager. The employer was represented by John Fiorelli of Corporate Cost Control, Inc. The hearing was recessed to allow the submission of additional documents requested by the administrative law judge.

The hearing reconvened in Des Moines, Iowa, on August 18, 2011. Ms. Manhart again participated personally. The employer participated by Darin Casey and Kim Meyers. The employer was again represented by Mr. Fiorelli. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Manhart was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Manhart was employed by Hy-Vee, Inc. from August 7, 2005 until March 9, 2011. She worked full-time as a kitchen clerk. The employer has a written work rule, of which Ms. Manhart was aware, that prohibits employees from consuming merchandise without first making payment. She was discharged for violating the rule on March 9, 2011.

On March 9, Kim Meyers observed Ms. Manhart making preparations to go on break. She got her personal items and prepared a plate of food from the Hy-Vee kitchen. She ate the meal, cleared the table, and returned to work. As an employee, her cost for the meal was \$4.00. Ms. Manhart did not make payment for the meal at the register in the dining room before eating it and did not pay for it after eating. After the meal, she did attempt to purchase a telephone card at two of the store's registers but did not attempt to make or actually make payment for the meal at any register in the store. She was unable to purchase the telephone card, because the store credit card she was using did not have available credit. As a result of her failure to pay for her meal on March 9, Ms. Manhart was discharged the same day. The above matter was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

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. Manhart was discharged for consuming store merchandise without first making payment in violation of a known company rule. Her failure to pay the \$4.00 for her employee meal amounted to theft, which is clearly contrary to the type of behavior an employer has the right to expect.

The evidence of record does not establish any justification for Ms. Manhart's failure to pay for her meal before eating it. There was a register in the dining room where she ate the meal. Therefore, she would not have had to go out of her way to make payment. The credit card she says she intended to use for the payment could have been used at the dining room register. The fact that she also wanted to use the credit card to purchase a telephone card did not relieve her of the responsibility to honor the employer's work rule. There was no reason she could not have made two purchases.

If Ms. Manhart had, in fact, attempted to purchase the meal when she attempted to pay for the telephone card, this might be a different matter. She acknowledged that Exhibits One and Two represent her efforts to purchase the telephone card. Both voided transactions are for \$31.80, the amount she would have paid (including tax) for the telephone card. Conspicuously missing is the \$4.00 amount for the employee meal. Ms. Manhart contended that she told both cashiers to include the employee meal when ringing up the telephone card. The administrative law judge is not inclined to believe that two separate cashiers would both forget or neglect to add the employee meal. It is more likely that the meal was not mentioned to either cashier. Moreover, Ms. Manhart would have known from the totals that the meal had not been included. Her failure to correct the cashiers regarding the omission demonstrates a willingness to allow the meal to remain unpaid for.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has satisfied its burden of proving misconduct. Ms. Manhart deliberately and intentionally consumed product without making payment for it. Her theft constituted substantial misconduct and, therefore, benefits are denied.

DECISION:

The representative's decision dated April 6, 2011, reference 01, is hereby affirmed. Ms. Manhart was discharged by Hy-Vee, Inc. for disqualifying misconduct. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw