

**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**

**CARRIE A ROLLMANN
1920 GEORGE ST
SIOUX CITY IA 51103-2445**

**NELLIS MANAGEMENT COMPANY
C/O TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 06A-UI-02916-HT
OC: 01/29/06 R: 01
Claimant: Respondent (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

STATEMENT OF THE CASE:

The employer, Nellis Management Company (Nellis), filed an appeal from a decision dated February 27, 2006, reference 01. The decision allowed benefits to the claimant, Carrie Rollmann. After due notice was issued a hearing was held by telephone conference call on March 31, 2006. The claimant participated on her own behalf. The employer participated by Area Supervisor Jim Bast .

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Carrie Rollmann was employed by Nellis from

June 24, 2004 until January 30, 2006. She was a full-time shift leader at the Long John Silver's Restaurant.

The company policies require the deposit of the daily receipts at least once per day. Usually the shift leader or manager opening the store takes the deposit from the night before. A deposit should also be made between 2:00 p.m. and 4:00 p.m. but if the store gets busy and it is dark outside when the rush slows, the money is not to be taken to the bank and is kept in the safe for the next morning's deposit.

On Saturday, October 22, 2005, the morning deposit was made but not the afternoon one because it was dark by the time the assistant manger had time to ready the deposit. She left it in the safe but did not fill out the information correctly as she indicated on the form she had taken it to the bank.

Ms. Rollmann opened the store on October 23, 2005, but did not take the previous day's funds to the bank. Although company policy requires she maintained that the practice in that particular store was not to go to the bank on Sundays. Another shift leader, John Dowdy, opened the next morning but he did not go to the bank either in the morning or the afternoon. The claimant started her shift at 3:00 p.m. that day and also did not take the money to the bank. When she opened on October 25, 2005, there should have been six bags to deposit but there were only five.

The general manager was attempting to reconcile the deposits and the attendant paperwork when he discovered the missing bag. It contained \$2,576.31. He notified Area Supervisor Jim Bast who investigated by interviewing all of the employees involved in the preparation and deposit of the bank bags. He was not able to make any determination as to what had happened to the missing deposit and turned the matter over to the Sioux City Police Department.

The investigator for the police department was also unable to come to any conclusion of the case and no one has been charged with the loss of the money. On January 30, 2006, Mr. Bast discharged the claimant and the other shift leader, John Dowdy, for failing to observed the required cash handling procedures.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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, (8) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer discharged the claimant, not for theft of the money, but for failure to follow the required cash handling procedures. He knew this had happened three months prior when the deposit was found to be missing and could have discharged her on those grounds immediately, regardless of what the criminal investigation revealed. The above Administrative Code section requires there to be a final, current act of misconduct which precipitates the discharge. The administrative law judge considers the delay of over three months to have put the final action well beyond the definition of "current" and disqualification may not be imposed.

DECISION:

The representative's decision of February 27, 2006, reference 01, is affirmed. Carrie Rollmann is qualified for benefits provided she is otherwise eligible.

bgh/tjc