

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAYMIE A JENKINS
Claimant

APPEAL NO. 11A-UI-01005-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELLIS MANAGEMENT COMPANY
Employer

OC: 12/05/10
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated January 18, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 3, 2011. The claimant participated personally. The employer participated by Jon Harmsen, CFO; Ken Waltman, Vice President; and John Blanchard, Area Supervisor. Employer's Exhibits One through Six were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Maymie Jenkins was last employed by Nellis Management Company from June 3, 2009 until December 9, 2010 when she was discharged from employment. Ms. Jenkins held the position of full-time restaurant general manager and was paid by salary. Her immediate supervisor was Richard Levett.

Ms. Jenkins was discharged when it was determined that she had either engaged in or authorized 71 cash register voids during her most recent two and one-half months of employment without following required documentation. Under established company policy managers who void guest tickets are required to obtain the signature from the guest, a signature from the employee operating the cash drawer and are required to sign off on the void personally. A review of the numerous voids that took place during the claimant's work shift showed that the claimant had not followed the documentation required on numerous voids. Because the claimant was aware of the policy and the policy was in place to avoid potential misappropriation of company funds, the employer considered the claimant's numerous failures to document cash register voids to be a serious infraction and discharged Ms. Jenkins.

It is the claimant's position that her confidential manager's cash register codes may have been obtained by unauthorized individuals. It is the claimant's further position that an "acting" general manager assisted the claimant and that person may have been responsible for some voids that were not documented.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient misconduct to warrant the denial of unemployment insurance benefits. It is.

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.

In this case the evidence establishes that Ms. Jenkins was aware of the company policy which required that cash register voids be documented with the signature of the customer, the person operating the cash register as well as the manager who was authorizing the void. The claimant knew that it was her job responsibility to not only follow this procedure in voids that she was personally authorizing but also to review other voids to make sure that other employees were following the rules. When the employer reviewed approximately 71 cash register voids that had taken place during the claimant's last two and one-half months of employment, it was determined numerous voids had been allowed without being documented as required by company policy. Because the claimant failed to follow this important and required procedure and did not ensure that other workers were doing so, she was discharged from employment.

The evidence in the record does not establish that Ms. Jenkins engaged in any misappropriation of company funds. The record, however, does establish that the claimant failed to follow or ensure that other workers followed an important company procedure. The administrative law judge thus concludes that the claimant's failure showed a disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Iowa Employment Security Law.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 18, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing

that she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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