

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

TAMARA J ROBERTS
1008 – 13TH ST
ONAWA IA 51040-1509

MIKSELL ENTERTAINMENT
CD WAREHOUSE
2120 – 46TH ST
DES MOINES IA 50310

Appeal Number: 06A-UI-07502-CT
OC: 06/18/06 R: 01
Claimant: Respondent (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
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Miksell Entertainment filed an appeal from a representative's decision dated July 18, 2006, reference 01, which held that no disqualification would be imposed regarding Tamara Roberts' separation from employment. After due notice was issued, a hearing was held by telephone on August 23, 2006. Ms. Roberts participated personally. The employer participated by Diane Miksell and Richard Miksell, Owners. Exhibits 1 through 19 were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Roberts began working for Miksell Entertainment on September 20, 2005. She was already working as manager at the store when it was purchased by the Miksells in September of 2005. She was last employed full time as store manager. She was discharged from the employment.

Part of the reason for the discharge concerned Ms. Roberts' handling of financial records. She was given instructions in October and November as to how the cash reconciliation forms were to be completed. Any cash overages or shortages were to be reported. Ms. Roberts instructed staff performing closing duties to alter information. If the drawer was short, the employee was to take money from a tin in the office or a jar on her desk to make the drawer balance. If there was an overage, the employee was to place the excess money in the tin. The employer confirmed with individuals working under Ms. Roberts that she had given this instruction. The employer also has "Reconciled Cash Report" forms that are used at the end of the day. The employee is to note all cash by denomination on the sheet. The form was to be kept with other daily reports. However, Ms. Roberts discarded the forms.

On April 28, 2006, Ms. Roberts was told that the store was not to have three people scheduled at the same time except on Monday mornings. She had three people scheduled for the same time on May 13 and May 31. There were other occasions on which there was a one-hour overlap of three employees. In an e-mail dated June 18, the employer questioned Ms. Roberts about the one-hour overlap. She indicated it was used as a time to talk with and work on things with the employees. She indicated she was no longer able to have store meetings and needed the time to discuss changes being implemented by the employer. The employer notified her on June 18 that she was to refrain from scheduling overlaps that caused three people to be working at the same time.

The employer believed Ms. Roberts was spending unnecessary funds on new cases for certain products. The employer purchases and re-sells used CD's, DVD's, videos, and video games. The items were not to be placed in new packaging unless the current packaging was severely damaged or scratched. The employer believed Ms. Roberts was using new jewel cases on every item rather than just those that were damaged. The employer had several conversations with her explaining that she was not to place every item in new packaging. On April 28, Ms. Roberts was advised that she was not to make any purchases unless she had the employer's approval. She was given the authority to purchase disposable items used on a day-to-day basis, such as paper towels, toilet paper, and ink. Ms. Roberts made purchases in the amount of \$1,255.59 without prior approval. The items purchased were not disposable items used on a day-to-day basis. The purchases were made between May 3 and June 14.

As a result of continuing problems with Ms. Roberts following policies, she was notified of her discharge on June 22, 2006. She had been verbally warned that she would be replaced if she was unwilling to perform the job in the manner directed by the employer.

Ms. Roberts filed a claim for job insurance benefits effective June 18, 2006. She has received a total of \$1,944.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Roberts 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). Several reasons have been given for Ms. Roberts' discharge. She had three individuals scheduled to work at the same time in spite of a directive from the employer that such scheduling was only to occur on Monday mornings. It was not unreasonable for her to assume that a one-hour overlap to discuss store business was appropriate. The scheduling problem did not occur so frequently as to constitute a wanton disregard for the employer's standards.

Ms. Roberts and the employer were not of one mind with regard to which packaging had to be replaced on used items purchased for the store. Whether a case is too damaged is, to some extent, a subjective determination. The administrative law judge cannot conclude on the evidence presented that Ms. Roberts was replacing the packaging on all items.

Ms. Roberts' handling of financial documents constituted a substantial disregard for the employer's interests and standards. She was not accurately documenting the status of the store's funds. Shortages were rectified by using money from other sources to make the books balance. She discarded the "Reconciled Cash Reports," which made it difficult to audit the books. Her conduct resulted in depriving the employer of a true record of the store's financial activities. If the cash drawer was made to balance, there would be no record on which to determine whether employees were negligent in handling cash, thereby causing shortages or overages. As a manager, it was Ms. Roberts' responsibility to maintain accurate records. It appears that her efforts were intended to mislead the employer into believing that the register balanced more often than it actually did.

The employer had the right to expect that the manager would maintain true and accurate records of the store's finances. Ms. Roberts' failure to maintain accurate paperwork was contrary to the standards she knew or should have known were expected of her. A manager should not have to be warned that the employer expects true and accurate record-keeping. For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

Ms. Roberts has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated July 18, 2006, reference 01, is hereby reversed. Ms. Roberts was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Roberts has been overpaid \$1,944.00 in job insurance benefits.

cfc/pjs