

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

HEATHER KRAUSE
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WAVERLY RANCH INC
540 N MAIN AVE
SIOUX CITY IA 51250

Appeal Number: 04A-UI-05728-E
OC 04-25-04 R 03
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 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 17, 2004, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on June 22, 2004. Patty Hardee, General Manager, Scott Davis, Owner and Mike Flanagan, Area Manager, participated in the hearing on behalf of the employer. The claimant did not respond to the hearing notice and did not participate in the hearing. Employer's Exhibits One and Two were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier/dishwasher/bus-person for Waverly Ranch from March 8, 2002 to April 21, 2004. On April 21, 2004, Shift Supervisor Scott Plagge saw the claimant on the front register going through previous orders listed under his name (Employer's Exhibit One). He went to another register and found three tickets that had been voided under his name in the previous three minutes (Employer's Exhibit One). He returned to the front register and saw the claimant take a \$20.00 bill out of the register, but she put it back when she saw him (Employer's Exhibit One). Mr. Plagge then asked the claimant to accompany him to the back room at which time he asked her to empty her pockets (Employer's Exhibit One). The claimant first stated she did not have to do so but then removed a couple of non-work related items from her pockets (Employer's Exhibit One). Mr. Plagge asked her about the voided tickets and she said the first one was the result of her "playing" on the computer and accidentally hit "complete" instead of "cancel" (Employer's Exhibit One). She stated she did not know about the other two voided tickets but pulled all three tickets from her pocket after Mr. Plagge again asked her where the voided ticket printouts were (Employer's Exhibit One). Mr. Plagge then called General Manager Patty Hardee and told the claimant to wait until Ms. Hardee arrived but the claimant walked out and did not return. The employer reported the situation to the police and Sergeant Richard Pursell interviewed the claimant May 18 and May 25, 2004. The claimant admitted taking \$20.00 from the employer April 14, 2004, and stated she also took \$20.00 on two other occasions (Employer's Exhibit Two). She told Sergeant Pursell she voided three tickets April 21, 2004, with the intention of taking the money, but decided not to before seeing Mr. Plagge approaching (Employer's Exhibit Two). Sergeant Pursell notified Owner Scott Davis of the situation and Mr. Davis made the decision not to press charges if the claimant agreed to make restitution (Employer's Exhibit Two).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code Section 96.6-2. The claimant walked off the job when confronted by Mr. Plagge about voided tickets and while she initially denied stealing cash from the employer, she eventually admitted taking at least \$60.00. Although the claimant told the employer she was not going to work for someone that did not trust her, the employer's mistrust of the claimant in this case was well-placed and the claimant has not established that her leaving was for good cause attributable to the employer. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The May 17, 2004, reference 02, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$280.00.

je/kjf