

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: The claimant was employed by the employer, most recently as a cage cashier from October or November 1999, from April 30, 1999 until she was discharged on September 10, 2005. The claimant was discharged for violating the employer's policies concerning overages and shortages in her cash drawer. The employer has a policy, which is part of the union contract, providing for progressive disciplines for overages and shortages in a 30 day period as follows: from \$20.00 to \$40.01 – verbal warning; \$40.02 to \$60.01 - written warning; \$60.02 to \$80.01 – one-day suspension; \$80.02 to \$120.01 – two-day suspension; over \$120.02 - discharge. On July 8, 2005, the claimant had a cash shortage of \$91.00. For this the claimant received a two-day suspension. On August 12, 2005, the claimant had a \$130.00 shortage. The claimant was at discharge with this shortage but the employer gave the claimant a second chance and suspended the claimant for three days but did not discharge the claimant. The claimant was placed on a 30-day probation providing that if a shortage of \$50.00 or more occurred before September 23, 2005, the claimant would be discharged. On August 24, 2005, the claimant had a shortage of \$10.00. The claimant received no warning or discipline for this. On September 7, 2005, the claimant had a \$100.00 shortage and she was discharged.

Each cage cashier, including the claimant, begins with a "bank," a cash drawer beginning with \$25,000. The employee is then responsible for that cash drawer. As the shift goes on the employee must document all money put into the cash drawer and all money taken out of the cash drawer. At the end of the employee's shift, the cash in the drawer must balance with the documentation. Only one key is issued for the cash drawer. The employee is responsible for keeping the cash drawer locked at all times when the employee is not by the drawer. The drawer can be unlocked while the employee is at the drawer working in the cage. The employee must keep the key with him or her at all times while on the shift and then return the key at the end of the shift. The only duplicate key is well secured in a safe. When the claimant first began working in the cage in October or November of 1999, she was given training concerning cash handling policies. The claimant did not request additional training thereafter nor was the claimant aware that she could do so. The claimant was periodically observed by the employer and the employer found no violations of the employer's cash handling procedures. The claimant is not accused of stealing or taking the shortages in question. Neither the claimant nor the employer was able to account for any of the shortages noted above.

In addition to the warnings noted above, since August 18, 2004, and before July 8, 2005, the claimant received a verbal warning, a written warning, a two-day suspension, a written warning, another written warning, a verbal warning, a two-day suspension, a verbal warning, a written warning, and another written warning, all for cash shortages and all since August 18, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

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).

The parties agree, and the administrative law judge concludes, that the claimant was discharged on September 10, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The claimant was discharged for cash shortages in her cash drawer in violation of the employer's policies as set out in the Findings of Fact. At the outset, the administrative law judge concludes that the employer has not demonstrated by a preponderance of the evidence that the claimant's cash shortages were either deliberate acts or omissions or willful and wanton disregard of the employer's interest and therefore are not disqualifying misconduct for those reasons. However, the administrative law judge is constrained to conclude that the claimant's cash shortages were carelessness or negligence in such a degree of recurrence, as to establish disqualifying misconduct. The claimant conceded that she made "mistakes" which resulted in shortages. The claimant could have miscounted the money or bills could have been stuck together. In any event, on four occasions in two months the claimant was short a total of \$331.00. This exceeds the accumulated total shortages for

discharge as set out in the employer's policy, which is part of the union contract as set out in the findings-of-fact. The claimant also violated a thirty-day probation established after she was short \$130.00 on August 12, 2005. In fact, on that occasion, the claimant was given a second chance because she was at discharge at that point, but the employer, instead of discharge, gave the claimant a three-day suspension and then placed her on probation for 30 days. In addition, the claimant had ten other shortages for which she received various kinds of warnings as set out in the finding-of-fact in the 11 months prior to the shortage on July 8, 2005. In total the claimant had 14 shortages in a little over one year and received warnings or disciplines for each. The administrative law judge is constrained to conclude that each shortage was as a result of carelessness or negligence on the part of the claimant. The administrative law judge is further constrained to conclude that this carelessness or negligence was in such a degree of recurrence as to establish disqualifying misconduct. The administrative law judge reiterates that the claimant had 14 shortages with accompanying warnings or disciplines in a little over one year. The administrative law judge understands an occasional cash handling mistake but believes that 14 in a little more than one year is unreasonable and demonstrates reoccurring carelessness or negligence. The administrative law judge notes that some of the claimant's shortages were substantial.

In summary, and for all the reason set out above, the administrative law judge is constrained to conclude that the claimant's cash drawer shortages were carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of September 26, 2005, reference 01, is affirmed. The claimant, Elizabeth M. Bruns, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she was discharged for disqualifying misconduct.

dj/kjw