

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

LAURA RUCKMAN
810 N 9TH ST
COUNCIL BLUFFS IA 51503

DARRAHS TOTAL INC
3609 – 9TH AVE
COUNCIL BLUFFS IA 51501

Appeal Number: 04A-UI-07893-HT
OC: 06/27/04 R: 01
Claimant: Appellant (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 claimant, Laura Ruckman, filed an appeal from a decision dated July 15, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 12, 2004. The claimant participated on her own behalf. The employer, Darrah's Total, Inc. (Darrah's), participated by General Manager Sandra Darrah and Assistant Manager Jean Pierce .

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: Laura Ruckman was employed by Darrah's from February 28, 2002 until June 24, 2004. She was a full-time cashier.

The claimant's performance as a cashier was excellent for the first two years of her employment. Other than an occasional, small shortage in the cash drawer, there were no problems. Even when the employer installed a new system for the cash registers and gasoline pumps, Ms. Ruckman's performance was highly regarded. However, during the last month or so of her employment, large shortages began to occur in her cash drawer during her shift. Approximately one month before her employment ended, General Manager Sandra Darrah instructed her to always keep her drawer locked unless she was in the immediate area, and the assistant cashiers were told not to use her drawer.

The claimant admitted to occasionally leaving the drawer unlocked because she would forget or be in a hurry to go to the bathroom. The assistant cashier who usually worked with her was let go two weeks before Ms. Ruckman was, but the shortages continued. Mr. Darrah and Assistant Manager Jean Pierce would review the journal tapes to try and find errors to explain the shortages, and the claimant would also be asked to go over them. Some of the shortages were resolved in this manner but never the total amount.

In the week from June 16 through 23, 2004, the claimant's drawer was short \$115.59 on June 16, \$146.75 short on June 19, \$383.67 short on June 20, and the total shortage for the entire shift on June 23, was \$254.71. This amount included a shortage of \$184.00 in the lottery drawer. The claimant had been told if the shortages continued her job would be in jeopardy and she was unable to offer any explanation for the large shortages in her drawer. She was discharged by Ms. Darrah on June 24, 2004, after the final shortage.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she 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.

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 employer has not asserted the claimant took any of the money which was "short" in the cash drawer. However, she was still responsible for maintaining and protecting the assets of the employer which she failed to do. Although she was instructed to lock the cash drawer when she was not present, she admitted to not always doing so when she would leave the area. There is no evidence any of the assistant cashiers accessed her drawer during this time, but since she was not present, and did not lock it, this cannot be established with a certainty. The claimant's negligence, both in failing to secure the drawer and the large shortages, is negligence to such a degree to equal deliberate misconduct. She is disqualified.

DECISION:

The representative's decision of July 15, 2004, reference 01, is affirmed. Laura Ruckman is disqualified, and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/tjc