

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDIE L KLINKNER**  
Claimant

**APPEAL NO. 09A-UI-15866-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILD ROSE CLINTON LLC**  
Employer

**OC: 09/20/09**  
**Claimant: Appellant (2)**

Section 96.5-2-A -- Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 9, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 24, 2009. Claimant participated. Employer participated by Sharon Chase, Table Games Manager. The record consists of the testimony of Brandie Klinkner and the testimony of Sharon Chase.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a casino located in Clinton, Iowa. The claimant was hired on November 20, 2008. Initially she worked in the "cage" and then she became a dealer in the table games department. She primarily dealt Blackjack.

The incident that led to the claimant's termination occurred on September 19, 2009. The claimant and a customer got into an argument over the game. The claimant did not handle the disagreement with the customer in the optimal manner. She was relieved by another dealer and threw the cards in the center of the table instead of placing them in the discard rack. The employer viewed the claimant's actions as a disruption of the whole game and terminated her on September 21, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes ordinary negligence in isolated instances or good faith errors in judgment or discretion. The employer has the burden of proof to show misconduct.

After carefully reviewing the evidence in this case, the administrative law judge concludes that the employer has not shown misconduct. The claimant acknowledged that she did not handle the dispute over the game with the customer as she should have. There was no profanity or vulgar language used. The claimant threw the cards in the middle of the table after she thought the game was over and she had been relieved by another dealer. There was no evidence that the claimant had ever done this sort of thing before or that she had been warned in writing or verbally over her treatment of customers. The claimant's actions on September 19, 2009, appear to have been negligence or poor judgment in an isolated situation. The employer was free to terminate the claimant but the claimant is not disqualified from receiving benefits. Benefits will be allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated October 9, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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