

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN A CHILLOOK
Claimant

APPEAL NO. 10A-UI-14205-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HJD SUB TENANT LLC
HOTEL JULIEN DUBUQUE**
Employer

**OC: 08/15/10
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Hotel Julien Dubuque, filed an appeal from a decision dated October 8, 2010, reference 01. The decision allowed benefits to the claimant, Lynn Chillook. After due notice was issued, a hearing was held by telephone conference call on December 2, 2010. The claimant participated on her own behalf. The employer participated by Manager Jill Luning and Front Office Manager Erin Newroth.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Lynn Chillook was employed by Hotel Julien Dubuque from June 4, 2009 until August 15, 2010 as a full-time front desk supervisor. She received a written warning March 25, 2010, which notified her that her job was in jeopardy as a result of guest complaints about rudeness and poor service. The warning encouraged her to be aware of how her tone of voice and body language were perceived by the guests.

After the warning there was another incident June 5, 2010, where the claimant had made rude comments to and about wedding guests waiting in the lobby for a reception. Another incident which was discussed with her pertained to more rude comments made about guests who were in the hotel for a meeting. She had said at one point, "don't they know we hate them?" and other attendees complained of generally poor service and rude conduct.

On August 11 and 12, 2010, three separate complaints were received about the claimant being rude. She "rolled her eyes" at someone who had asked her a question, was rude to a guest who complained about her being rude to his wife earlier in the day and the last was a verbal confrontation with a guest whom Ms. Chillook had accused of being "abusive" and "inappropriate."

Front Office Manager Erin Newroth discussed all three complaints with the claimant on August 12, 2010, and she admitted she had been inappropriate. The matter was then discussed with General Manager Jill Luning and the decision was made to discharge the claimant.

Lynn Chillook has received unemployment benefits since filing a claim with an effective date of August 15, 2010.

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.

As a person working at the front desk of a hotel the claimant was in a position to be the first and final impression a guest had of the business. Her technical skills may have been acceptable but it is evident from the number of warnings she received that her "people skills" were in need of substantial improvement. Making rude comments to and about guests leaves a very, very poor impression of the business and hotels rely strongly on repeat business and recommendations from satisfied guests.

Ms. Chillook's attitude did not improve after several warnings. The final incidents which precipitated the discharge were more customer complaints. The fact there were three serious complaints about her rudeness and poor service in only two days verifies this was not an isolated incident or someone having "a bad day." Her conduct gave guests a bad experience

with the hotel and is a violation of the duties and responsibilities the employer has the right to expect of an employee working the front desk. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of October 8, 2010, reference 01, is reversed. Lynn Chillook is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css