

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA C HANSON

Claimant

APPEAL NO. 09A-UI-18093-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILD ROSE CASINO & RESORT

Employer

OC: 10/25/09

Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Barbara Hanson filed an appeal from a representative's decision dated November 30, 2009, reference 01, which denied benefits based on her separation from Wild Rose Casino & Resort. After due notice was issued, a hearing was held by telephone on January 13, 2010. Ms. Hanson participated personally. The employer participated by Audrey Niemann, Human Resources Manager, and Patricia Jackson, Food and Beverage Manager. Exhibits One through Eight were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Hanson was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hanson was employed by Wild Rose Casino & Resort from February 5, 2007 until October 10, 2009. She was employed full time as a cocktail server and bartender. Employees are required to report all tips. If the hourly wage after tips does not meet the minimum wage for a casino employee, the employer pays a tip differential so that the resulting wages is at the minimum level.

On January 23, 2009, Ms. Hanson signed a "Tip Reporting Policies and Procedures" document. The document (Exhibit 6) reads in part: "Count all tips at the conclusion of your shift. You must then report all tips received in Micros and print the Micros direct tip report." During a tip audit on October 10, 2009, it was discovered that Ms. Hanson was underreporting her tips. She reported \$25.00 in tips for both October 9 and October 10. Based on its review of surveillance tapes, the employer determined that she should have reported \$48.00 and \$50.00 respectively. When questioned, Ms. Hanson acknowledged that she had not been reporting all of her tips. She indicated that her manager, Patricia Jackson, had told her to only report a portion of her tips, a contention that Ms. Jackson denied. As a result of her failure to report all tips, Ms. Hanson was discharged on October 10, 2009.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Hanson was discharged because she failed to report all of her tips as required by the employer's policy. The policy she signed on January 23, 2009 is clear and unambiguous. The policy precisely and clearly states "count all tips" and "report all tips." The administrative law judge is not inclined to believe that Ms. Hanson did not understand the reporting requirement.

By not accurately reporting her tips, Ms. Hanson created situations whereby the employer would have to pay her additional monies because her tips did not bring her to the required hourly wage. She would, in essence, be receiving money she was not entitled to receive. This constitutes a substantial disregard of the standards an employer has the right to expect. It is concluded, therefore, that disqualifying misconduct has been established. As such, benefits are denied.

DECISION:

The representative's decision dated November 30, 2009, reference 01, is hereby affirmed. Ms. Hanson was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs