

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARLYNN M JACOBS**

Claimant

**CATFISH BEND CASINOS II LLC**

Employer

**APPEAL NO: 13A-UI-03988-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/10/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 29, 2013, reference 01, that held she was discharged for misconduct on March 10, 2013, and benefits are denied. A telephone hearing was held on June 7, 2013. The claimant participated. Steve Morley, HR Director, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began employment on July 19, 2007, and last worked for the employer as a full-time bartender/server on March 11, 2013. The claimant was discharged for repeated rude conduct toward customers.

The employer issued claimant a written discipline for unfavorable customer comments that she signed for on August 22, 2012. She was suspended for one day and she was warned that a further incident could lead to employment termination. She sought medical treatment for her emotional behavior and she was given medication that she has taken through her employment termination.

On March 11 the employer received a written customer complaint against claimant on March 9, 2013. The complaint states claimant was rude and inconsiderate. The employer discharged claimant for this incident in light of the August 2012 discipline.

## 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.

The administrative law judge concludes employer has established claimant was discharged for misconduct in connection with employment on March 11, 2013.

The employer established claimant was disciplined for rude conduct toward a customer in August 2012 and with a one-day suspension put claimant on notice that her job was in jeopardy. The March 9 rude conduct toward a customer constitutes job disqualifying misconduct in light of the August discipline.

Claimant acknowledges she had an emotional issue with her behavior by seeking medical treatment and taking medication. Claimant knew the standard of behavior the employer required for customer service and she knowingly failed to meet the standard.

**DECISION:**

The department decision dated March 29, 2013 reference 01, is affirmed. The claimant was discharged for misconduct on March 11, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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