

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GLORIA J CONNOLLY**  
Claimant

**APPEAL NO. 11A-UI-02072-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILD ROSE CLINTON LLC**  
Employer

**OC: 01/23/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 17, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 14, 2011. Claimant participated. Employer participated by Kristian Snyder, human resources generalist, and Stan Seago, hospitality manager. The record consists of the testimony of Kristina Snyder; the testimony of Stan Seago; the testimony of Glorai Connolly; and Employer's Exhibits 1-5.

**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 gaming business located in Clinton, Iowa. The claimant was hired by the employer's predecessor on January 17, 1995. The claimant's last day of work was January 14, 2011. She was placed on suspension on January 15, 2011, and terminated on January 19, 2011. At the time of her termination she was a full-time hospitality supervisor.

The incident that led to the claimant's termination occurred on January 14, 2011. The claimant is a non-tipped employee. As a supervisor, she is prohibited from receiving tips. This policy was known by the claimant. On January 14, 2011, the claimant took a \$5.00 tip from a customer. She folded it up into a little square. Surveillance video showed the claimant looking at the tip jar. She did not put the tip in the jar.

An employee notified a hospitality manager of the incident. The DCI, which has agents in place at the casino, asked the employer if it could investigate. The employer was not privy to the results of that investigation. The employer held off terminating the claimant until the DCI completed its investigation. The claimant was terminated for what the employer deemed dishonesty on the part of the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will follow its work rules and not deliberately violate those rules. One of the most fundamental duties owed by a worker to her employer is honesty and a violation of that duty can be misconduct. The employer has the burden of proof to show misconduct.

The evidence is uncontroverted that the claimant took a \$5.00 tip from a customer. The employer had a policy that forbade supervisors from taking tips from customers. All tips had to be placed in a tip jar and tips were shared or given to the person who earned the tip. The claimant knew this policy. A customer gave her a \$5.00 tip. The claimant felt that this tip was for her personally and so she kept it. The employer was notified about the tip and the claimant

admitted she took it. The employer terminated the claimant not only for the dishonesty but because the claimant was a supervisor. Her credibility was suspect among the employees she supervised for having taken a tip that belonged to those employees.

The administrative law judge concludes that the claimant deliberately violated a known policy. Her act was fundamentally dishonest. Accordingly, benefits are denied.

**DECISION:**

The decision of the representative dated February 17, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, 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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