

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADRIANA PALOMINO**  
Claimant

**APPEAL NO. 11A-UI-07872-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLS ENTERPRISES INC**  
Employer

**OC: 12/19/10**  
**Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Adriana Palomino filed a timely appeal from an unemployment insurance decision dated June 10, 2011, reference 01, that disqualified her for benefits upon a finding that she had voluntarily left employment without good cause attributable to the employer. After due notice was issued, a telephone hearing was held July 11, 2011 with Ms. Palomino participating. John Henson of TALX UC eXpress appeared on behalf of the employer, Wells Enterprises, Inc. Human Resources Business Partner Courtney Willson and Operations Manager Tim Meyer testified.

**ISSUE:**

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Adriana Palomino was employed by Wells Enterprises, Inc. from June 30, 2008 until she was discharged May 19, 2011. On or about May 12, 2011, a female co-worker reported that Ms. Palomino had touched her in the groin area and made a statement containing sexual innuendo. Company management began an investigation. During the investigation Ms. Palomino was instructed not to speak to the co-worker who had made the complaint. She did so, telling the co-worker that the co-worker would be “sorry” for taking the matter to personnel. During the course of the investigation, Ms. Palomino made several inconsistent statements to management. After learning that May 19, 2011 would be her last day, Ms. Palomino left employment early.

**REASONING AND CONCLUSIONS OF LAW:**

It is clear from the evidence that the claimant knew that her employment would be terminated as of the end of the day on May 19, 2011. The fact that she left work early is immaterial. The separation was a discharge.

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.

The evidence persuades the administrative law judge that Ms. Palomino made an inappropriate comment and touched a co-worker in an offensive way on May 12, 2011. The claimant testified during the hearing that she was aware of the relevant company policies. It is also clear from the evidence that Ms. Palomino spoke to the co-worker after being told not to do so. The administrative law judge resolves the credibility issue of the content of that conversation in favor of the employer because of evidence in the record showing that the claimant made inconsistent statements during the course of the investigation. Benefits are withheld.

**DECISION:**

The unemployment insurance decision dated June 10, 2011, reference 01, is modified. The separation was not a voluntary quit. The claimant was discharged for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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