

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA J SIBLEY**  
Claimant

**APPEAL NO. 10A-UI-03439-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILD ROSE CLINTON LLC**  
Employer

**OC: 01/31/10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated February 24, 2010, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on April 15, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Sandy Simpkins. Kristina Snyder participated in the hearing on behalf of the employer with witnesses, Maria Machau and Melissa King.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a buffet server from October 24, 2001, to January 30, 2010. The claimant had received warnings, including a final written warning in February 2009, for discourteous treatment of coworkers, including outbursts of temper and profanity.

On January 30, 2010, the claimant's supervisor, Melissa King, received a complaint that the claimant was folding napkins when there were tables in her section that needed to be wiped off. When King asked the claimant to make sure her tables were wiped off, the claimant responded that the person assigned to bus tables, Cassie Hawkins, needed to do it because she was lazy and was not doing anything. She said this loud enough that Hawkins and other employees could hear her. King told the claimant that Hawkins was bussing tables at that time, and it was part of the claimant's job to make sure tables were wiped off. The claimant said "whatever" and then told King that she was not going to split any tips with Hawkins. She then went over to wipe off the tables, but Hawkins was already there. She went back to tell King that Hawkins was wiping her tables and had an attitude. She again told King that she was not going to split any of her tips with Hawkins. King told her that she was required to "tip out" the bussers. The claimant replied "whatever" and left the area.

The employer discharged the claimant on February 1, 2010, for repeated discourteous treatment of employees.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct violated a known work rule and final warning and was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The claimant presented evidence about Hawkins' constant following her around and talking to her about her mixed-up life, but this does not provide an excuse for the claimant's repeated demeanor issues with coworkers.

**DECISION:**

The unemployment insurance decision dated February 24, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs