

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSANDRA M HAWKINS
Claimant

APPEAL NO. 11A-UI-10037-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILD ROSE CLINTON LLC
Employer

OC: 07/03/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Cassandra Hawkins, filed an appeal from a decision dated July 27, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 24, 2011. The claimant participated on her own behalf. The employer, Wild Rose, participated by Human Resources Manager Sharon Dehart, Food and Beverage Manager Maria Machu.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Cassandra Hawkins was employed by Wild Rose from June 18, 2008 until July 7, 2011 as a full-time server/hostess/cashier. On January 16, April 2 and December 8, 2010, she was given written warnings for violation of the demeanor policy. Customers and co-workers had complained about her discussing her personal life, sexual preferences and sexual encounters while at work. The final warning on December 8, 2010, included a disciplinary suspension and a warning her job was in jeopardy.

On July 6, 2011, a guest asked to speak with a member of management and Supervisor Freda Strub took his complaint about Ms. Hawkins discussing her sex life while serving them. The complaint was referred to Hospitality Manager Stan Seago. The claimant was interviewed and she said she had only responded to questions from the guest's son who was a personal friend. She was suspended pending further investigation. The human resources department reviewed the complaint and the claimant's past disciplinary record. The decision was made to discharge and she was informed the next day.

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.

The claimant had been advised her job was in jeopardy as a result of her violations of the "demeanor" policy by discussing her personal life with guests and co-workers. The warning did not make any exception for discussing her sex life if a guest asked her about it. The fact that at least one person sitting at the table found her conversation offensive is evidence for the necessity of the policy. If the guest's son had questions the claimant could easily have declined to discuss the matter while she was at work and after she was off, she would have been free to answer any of his inquiries.

The employer has the obligation to provide a safe and harassment-free work environment for all employees and guests. The claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of July 27, 2011, reference 01, is affirmed. Cassandra Hawkins is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs