

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANA A LANGE**  
Claimant

**APPEAL NO. 13A-UI-12056-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILD ROSE CLINTON LLC**  
Employer

**OC: 09/15/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a –Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 18, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on November 19, 2013. The claimant participated personally. The employer participated by Jessie Rosenow, human resources interviewer. The record consists of the testimony of Shana Lange and the testimony of Jessie Rosenow.

**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. The claimant was hired on August 18, 2008, as a full-time guest services manager. Her last day of work was September 20, 2013. She was terminated on September 20, 2013.

The incident that led to the claimant's termination occurred on September 18, 2013. One of the claimant's responsibilities was to oversee the gift shop. The claimant was instructed by Amy, the general manager, to contact all vendors and explain that no further orders would be made due to upcoming changes in corporate operation. Mary, one of the vendors, contacted the claimant and indicated that she was very disappointed about losing casino business. Mary made the statement that the casino business "sucked." The claimant sent back an email, which stated in part that the casino business did suck and that a lot of people did not like Amy. The claimant was terminated because of this email. The employer believed that the email violated its demeanor policy, which required professional positive contact with vendors. The claimant had never been disciplined in the past for violation of the demeanor policy.

## 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion in isolated situations. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant was terminated for sending an email to a vendor in which she agreed with that vendor that the casino business "sucked." She also remarked that some people did not like Amy, who was making changes to casino operations. While this email was unprofessional, the claimant was essentially agreeing with some statements made by the vendor in her email to the claimant. The administrative law judge concludes that the email was not so offensive that the claimant should be disqualified from receiving unemployment insurance benefits. The claimant had not been disciplined for this type of behavior in the past. Rather this appears to be a one-time error of judgment in an isolated situation. This is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated October 18, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs