

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID WOOD**  
Claimant

**APPEAL NO. 13A-UI-05736-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHANER OPERATING CORP  
RENAISSANCE SAVORY HOTEL**  
Employer

**OC: 04/14/13  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

David Wood (claimant) appealed an unemployment insurance decision dated May 6, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Renaissance Savory Hotel (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 20, 2013. The claimant participated in the hearing. The employer participated through Rick Gaede, Amanda Wombold and Employer Representative Aaron Heyer. Employer's Exhibits One through Five were admitted into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time bell person from October 3, 2011 through April 5, 2013 for violation of company policy for theft of a customer's clothing from her hotel room on April 3, 2013. The customer sent the employer an email on April 4, 2013 complaining that her pink Victoria Secret underwear was taken from her hotel room after she left the room to go to the health club between 2:45 p.m. and 3:30 p.m. The employer investigated the incident and discovered key card number 11 was used to enter room 516 at 2:56 p.m. on April 3, 2013. The claimant signed out key card number 11 at 7:00 a.m. on April 3, 2013 and he turned it in at 3:00 p.m. on that same day. Surveillance cameras showed the claimant exiting the elevator at 2:57 p.m. with his hands in his pocket and without a luggage cart. He clocked out for the day and left the hotel after that.

When questioned, the claimant explained that he was called for a luggage assist and went to room 516 by mistake. The employer had not disclosed what room was in question at that point. The claimant said it was near the end of his shift so he did not go to the correct room but called the front desk to report that they would be receiving a luggage assist request. The employer did not find the claimant's explanation logical or credible and discharged him as a result.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on April 5, 2013 for theft of a guest's lingerie from her hotel room on April 3, 2013. While the claimant denies theft, the evidence confirms he entered the guest's room without authorization and without a work-related purpose on April 3, 2013 at the time the theft

occurred. The employer may not have a surveillance recording showing the claimant took the guest's lingerie but the preponderance of the evidence confirms he did. The claimant's theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated May 6, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs