

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LISA J WOOD
704 N 16TH ST
SAC CITY IA 50583

LORING HOSPITAL
211 HIGHLAND AVE
SAC CITY IA 50583

Appeal Number: 05A-UI-03534-AT
OC: 02-27-05 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2a – Discharge

STATEMENT OF THE CASE:

Lisa J. Wood filed a timely appeal from an unemployment insurance decision dated March 25, 2005 reference 01 which disqualified her for benefits. After due notice was issued, a telephone hearing was held April 25, 2005 with Ms. Wood participating. Housekeeping Supervisor Tom Wilson participated for the employer, Loring Hospital.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lisa J. Wood was employed as a housekeeper by

Loring Hospital from March 1, 2000 until she was discharged on February 21, 2005. She was discharged because of poor performance of her duties. Ms. Wood had received prior discipline in September 2003 and in April and October 2004 concerning her performance. She also received informal verbal counseling from her supervisor, Tom Wilson. After each formal warning or informal counseling, her performance would improve temporarily. The final straw was a review of 13 rooms which Ms. Wood cleaned on February 21, 2005. All of them were inadequate for one reason or another. In some rooms television screens had not been dusted. Dirt and food were under some of the beds. In some cases, the faucets were streaked. Mr. Wilson showed the rooms to Ms. Wood prior to her discharge. She did not have an explanation for the poor quality of work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Ms. Wood was discharged for misconduct in connection with her work. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

While an individual who lacks the necessary skill to perform a job to the employer's satisfaction is not guilty of misconduct, one who possesses the necessary skills but does not apply the skills consistently is guilty of actions contrary to the employer's interest. The greater weight of evidence is that Ms. Wood possesses the necessary skills but that she did not consistently apply those skills to her work. Misconduct has been established. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated March 25, 2005 reference 01 is affirmed. 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.

sc/pjs