

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANNE M WILLIAMS

Claimant

APPEAL NO. 13A-UI-04602-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

OC: 08/26/12

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated April 3, 2013, reference 04, that held the claimant was not discharged for excessive unexcused absenteeism on March 6, 2013 and benefits are allowed. A telephone hearing was held on June 24, 2013. The claimant participated. Sara Hofer, former Team/Training Manager, and Sharon Robertson, Senior HR Generalist, participated for the employer. Employer Exhibits 1 – 7 were received as evidence.

ISSUES:

The issue is whether the claimant was discharged for misconduct.

The issue is whether claimant is overpaid UI benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a full-time customer support professional from February 18, 2013 to March 1. The claimant received the employer attendance policy. The policy provides three absences during a training period can result in employment termination.

The claimant called in an absence due to a migraine that the employer records as sick on February 25. The claimant was a no-call/no-show to work on March 4 due to a personal issue. When claimant failed to report to work on March 5 her trainer called her after her start shift time. Claimant could not decide whether to report to work due to her emotional reaction to a divorce at the time of her anniversary.

The employer discharged claimant on March 6 for three absences within the training period in violation of its training rules policy. Claimant has been receiving UI benefits on her claim.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes employer established misconduct in the discharge of the claimant on March 6, 2013, for excessive "unexcused" absenteeism.

While claimant offered an excusable reason for missing work on February 25 due to illness, her no-call/no-show on March 4/5 are not excusable due to personal reasons. The absences are excessive given her brief training period of employment.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a

continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been disqualified in this matter after receiving UI benefits, the overpayment issue is remanded to claims for a decision. The employer representative participated at fact-finding so there is no overpayment waiver.

DECISION:

The decision of the representative dated April 3, 2013, reference 04, is reversed. The claimant was discharged for misconduct in connection with employment on March 6, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his/her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs