

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY M GODDEN**

Claimant

**APPEAL NO. 14A-UI-05347-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**

Employer

**OC: 04/27/14**

**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 14, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on June 12, 2014. The claimant did participate. The employer did participate through (representative) Sharon Robertson, Senior Human Resource Generalist; Laura Karmann, Senior Team Manager; and James Hanson, Team Manager. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a customer support professional beginning on January 2, 2013 through April 19, 2014 when he was discharged.

The claimant was given a copy of the employer's attendance policy when he was hired, but chose not to read it. He was given multiple warnings that his poor attendance was placing his job in jeopardy. The employer requires that employees notify them at least two hours prior to the start of the shift when they are going to miss work. The claimant was to start work on April 17, 2014 at 3:00 p.m. He drove himself to the emergency room prior to that time but chose not to call the employer and tell them he was ill. The claimant was well enough to drive himself to the hospital demonstrating he had the physical ability to call the employer but simply chose not to do so.

The claimant was last warned on April 7 that he faced termination from employment if he reached eight attendance points. The claimant was late to work on April 14 and received one-half point. The claimant's absence on April 17 counted as one point against him and brought him to eight points. The claimant was not told by Steve Phongsa on April 17 that he could make up the time because Mr. Phongsa did not work that day.

The claimant was not treated any differently than any other employee and all of his warnings and absences are documented in Employer's Exhibit One.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Iowa Admin. Code r. 871-24.32(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Absences due to **properly reported** illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits.

The claimant had the ability to physically drive himself to the emergency room. He could have called the employer but chose not to do so. Under these circumstances the claimant's last absence is not considered properly reported and thus is not excused for the purposes of unemployment insurance benefits.

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

**DECISION:**

The May 14, 2014, (reference 01) decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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