

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIE M STRICKLAND
Claimant

APPEAL NO. 12A-UI-06762-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04/29/12
Claimant: Appellant (5)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 5, 2012, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 2, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Sharon Robertson participated in the hearing on behalf of the employer with a witness, Derek Hahn.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a customer service professional from October 13, 2011, to April 22, 2012. The claimant was informed and understood that under the employer's work rules, regular attendance was required, employees were required to notify the employer if they were not able to work as scheduled, and employees were subject to termination after receiving eight attendance occurrences. The claimant had been warned about excessive absenteeism and tardiness. She received a written warning on March 22, 2012, because she had reached six occurrences.

After April 22, 2012, the claimant was absent from work due to her car breaking down and not having the funds to fix it. The claimant lives about 30 miles from the workplace. She was absent from work April 27, 28, and 29 and May 4, 5, and 6. On May 10, 2012, the employer discharged the claimant for excessive unexcused absenteeism and having over eight attendance occurrences.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. There is no question in this case that the claimant was discharged and did not quit. The issue is whether the discharge was for misconduct.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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 evidence shows that the claimant was discharged after being absent over several days due to transportation problems. There is case law that transportation issues are not considered excused absences. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive unexcused absenteeism, which amounts to work-connected misconduct under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated June 5, 2012, reference 01, is modified with no change in the outcome. The claimant was discharged for work-connected misconduct. She is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw