

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXANDRIA A STEPANEK
Claimant

APPEAL NO: 10A-UI-15539-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 08/22/10
Claimant: Appellant (5)

Iowa Code 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 4, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Lori Twohig and Monica Emsinger appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits?

Is the claimant able to and available for work as of August 22, 2010?

FINDINGS OF FACT:

The claimant started working for the employer in late December 2009. She worked full time as a customer service representative. Twohig supervised her.

The last day the claimant worked for the employer was August 5, 2010. The claimant saw her doctor on August 5. Her doctor faxed a work restriction to the employer on August 5. This doctor's statement indicated the claimant was to be off work August 6 through 8. The claimant was very ill, but she called the employer on August 6, 7, 8, and 9 to report she was ill and unable to work as scheduled.

The claimant was scheduled to work August 12, 13, 14, 15 and 16. The employer did not receive any message that the claimant called to report she was ill and unable to work. The claimant went to her doctor on August 19. When she returned from the doctor's office on August 19, she had received a letter indicating she no longer worked for the employer. The employer received a fax from the claimant's doctor on August 25. This doctor's statement indicated the claimant was excused from work August 10 through 19. Although the employer considered her to have abandoned her job as of August 17, Emsinger called the claimant on August 25 to talk to her about the doctor's statement she had just received. The claimant did not respond to the Emsinger's call and may not have received it.

As of the date of the hearing, the claimant has not been released to work by her physician.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts establish the employer initiated the August 17 employment separation after the claimant had not called or reported to work since August 9, 2010.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

When the employer discharged the claimant, the employer knew she had been excused from work August 6 through 8. The last time message the employer received that the claimant called to report she would not be at work was August 9. For five days the claimant did not call or report to work and the employer did not know why the claimant was not reporting for work. It was not until August 25 that the claimant's doctor or someone on her behalf faxed the doctor's statement excusing the claimant from work from August 10 through 19.

Although the claimant asserted she called the employer August 10 through 19, the employer has no record of these calls. The evidence does not establish that she called the employer after August 9. She did not even call the employer when she learned she had been discharged to see if the employer would reconsider ending her employment with the doctor's excuse she had.

While the claimant may have had reasonable grounds for not reporting to work, her failure to call the employer anytime after August 9 amounts to an intentional and substantial disregard of the employer's interest. The claimant committed work-connected misconduct. Therefore, as of August 22, 2010, the claimant is not qualified to receive benefits.

As of the date of the hearing, the claimant has not been released to work. Therefore, as of August 22, the claimant is also unable to and unavailable for work.

DECISION:

The representative's November 4, 2010 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit. Instead the employer discharged the claimant as of August 17, 2010. The employer discharged the claimant for excessive absenteeism which in this case constitutes work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 22, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be

charged. As of August 22, 2010, the claimant is not able to or available for work. This ineligibility remains until the claimant's reopens her claim and presents information that her doctor has released her to work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css