

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL VANLANINGHAM
Claimant

APPEAL NO: 11A-UI-03410-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 01-16-11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 9, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 11, 2011. The claimant participated in the hearing. Staci Albert, Human Resources Generalist and Scott Putney, Team Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer support phone professional for Stream International from November 5, 2007 to November 2, 2010. On March 15, 2010, the claimant received a behavioral warning for excessive idle time when he was not in a productive state. He was allowed three 15-minute breaks during his 12-hour shift which was 7.50 percent of his working time but he was averaging 9.89 percent. His Aux-0 goal was 1.00 percent, which is the time he was logged into the system and not taking calls, and he was at 4.26 percent. His billable training code goal was 2.00 percent, which is the time management would pull him away from the phone, and he was at 4.21 percent. On July 27, 2010, he received his final behavioral warning for abuse of his Aux-O time. He was averaging an Aux-O percentage of 2.61, a break time average of 12.34 percent and a billable training time average of 13.91. The warning stated that any further incidents could result in termination. On October 30, 2010, the claimant "rode" a call for 38 minutes with no activity. Team Manager Scott Putney came in and observed the claimant sitting with his feet up and laying back in his chair. He was not sure if the claimant was sleeping so he monitored his activity for 20 minutes and after not seeing any activity on his computer indicating the claimant was on a call he approached him and said his name and the claimant stirred and acted as if he was checking to see if a customer was on the phone. Mr. Putney asked the claimant to accompany him to a conference room where the claimant admitted he was sleeping on the job. The employer suspended him before terminating his employment November 2, 2010.

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.

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.

The claimant received two written warnings regarding his time management and excessive break times before being dismissed for admittedly sleeping on the job. The administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The March 9, 2011, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs