

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS VANN
Claimant

APPEAL NO: 09A-UI-14488-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 08-09-09
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 18, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 21, 2009. The claimant participated in the hearing. Hanna Cook, Human Resources Recruiter and Josh Reinders, Human Resources Recruiter, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 professional for Stream International from August 7, 2009 to August 10, 2009. He was interviewed for the position August 5, 2009, and completed paperwork including a request to do a background check (Employer's Exhibit One). The "Permission to Procure an Investigative Report" contained the question, "Have you ever been convicted of, been sentenced for, been placed on probation for, entered a guilty plea for, or any plea other than not guilty, or been the subject of a deferred adjudication, adjudication withheld, or disposition for violating any criminal law?" (Employer's Exhibit One). The claimant checked the box for "no" (Employer's Exhibit One). He was told he would be offered the position contingent on the background check results. The claimant started his employment Friday, August 7, 2009. Human Resources Recruiter Hanna Cook received the results of the background check that afternoon but Human Resources Manager Debbie Nelson was not there and needed to be present to conduct a termination. Ms. Nelson returned August 10, 2009, and she and Ms. Cook met with the claimant and told him the results of the tests showed he was guilty of driving with a suspended drivers license August 2, 1999; possession of alcohol while underage in November 2001; a DUI May 17, 2003; and possession of a controlled substance (felony), loitering or prowling and possession of drug paraphernalia March 13, 2005. The employer terminated the claimant's employment for failing to be honest in his interview and

when he signed the "Permission to Procure an Investigative Report." The claimant testified he did falsify the documentation because he was embarrassed to reveal his past. He decided to indicate on the form that he did not have any criminal incidents and see if the employer might miss it and hire him because he was afraid he would not have been hired if the employer learned the truth. He also stated that he did not want to answer the question honestly because he did not think it was the employer's business.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant was embarrassed to reveal his criminal background and has not been charged with any criminal activity since March 13, 2005, after having being charged with six crimes between August of 1999 and March 13, 2005, he still has a responsibility to honestly answer an employer's criminal background questions so the employer may accurately assess whether the criminal record could impact its business or its

employees. Under these circumstances, 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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The September 18, 2009, reference 01, decision is reversed. 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. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs