

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3,091,078 - EI

MICHELLE E THOMAS
Claimant

APPEAL NO. 13A-UI-00879-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 12/09/12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 17, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 25, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Bangone Chanthavong participated in the hearing on behalf of the employer. Exhibits 1 through 3 were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer support professional from August 2, 2010, to December 13, 2012. She was informed and understood that under the employer's work rules, she was required to maintain a courteous and professional tone in communication with employees and customers. The claimant had been warned about this during counseling sessions and a final written warning on September 10, 2012, after she had responded curtly to an employee in a computer chat session on August 11, 2012, when the employee had sent information to her twice to correct a misspelling. In November 2012, her supervisor complimented the claimant on improving her tone when responding to inquiries.

On December 13, the claimant had a computer chat session with a SiriusXM Satellite Radio representative inquiring on behalf of a customer whose service had been cancelled but had purchased a lifetime subscription. He asked if she could reactivate the service. When the claimant replied that the service had been closed since 2009, the representative said the customer had been receiving the service until a few days before. The representation then posted another message that the customer had purchased the service in 2009. The claimant then replied, "Stop. I am working on it. And I can't when you keep typing." She then told the representative to update the customer's credit card on file and the customer would not have to

pay again. When the representative replied that he did not understand, she reiterated that he needed to update the credit card so she could reactive the service and the customer would not have to pay. She told him to let her know when it was done. After the representative replied "One moment," the claimant responded, "Stop and go do it." The claimant waited for a response and then asked if it had been updated. She waited and asked if he was still there a couple of times. She waited another minute or two and typed "Done. It's set up. The credit card is off file. Have a good day, bye." The claimant then closed the chat session. The claimant had been instructed that if she did not get a response from the person after two minutes of prompting, she could close a chat session. It had been longer than two minutes after the representation had replied "One moment," when the claimant closed the session.

The representative complained to management that the claimant was rude to him during the chat session. The employer considered the claimant's treatment of the representative to be a violation of the employer's work rules and the final warning she had received in September 2012 and discharged the claimant on December 13, 2012.

The claimant filed for and received a total of \$3,458.00 in unemployment insurance benefits for the weeks between December 9, 2012, and March 23, 2013.

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.

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).

First, I cannot conclude that the claimant inappropriately terminated the chat session on December 13 as it seems she had fixed the problem, notified the representative that it was done, and told the representative to have a good day and goodbye. And I recognize the difficulty in perceiving tone in computer chat sessions. They are typed in a clipped staccato fashion, and it is hard to avoid interrupting chat participants because you cannot tell when they are going to hit the send button to send an additional message. But in this case, what the claimant said cannot be interpreted as anything other than rudeness to the SiriusXM representative. She commanded that he "Stop" typing, and after he said "One moment," ordered that he "Stop and go do it." The claimant had been warned more than once about similar conduct, including a final warning.

The claimant's violation of a known work rule and final warning was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated January 17, 2013, reference 01, is reversed. The claimant 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. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css