

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L BELLER
Claimant

APPEAL NO. 08A-UI-03261-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 03/02/08 R: 01
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Jessica Beller filed an appeal from a representative's decision that was dated March 26, 2008, reference 01, which denied benefits upon her separation from Stream International, Inc. After due notice was issued, a hearing was held by telephone on April 16, 2008. Ms. Beller participated personally. Participating as a witness was Barb Maloney. Although duly notified, the employer failed to respond to the hearing notice and did not participate.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from October 15, 2007, until February 4, 2008, when she began an approved leave of absence at her request due to pregnancy. Ms. Beller worked as a full-time customer service representative and was paid by the hour.

After remaining on a medical leave of absence from February 4, 2008, the claimant was released to return to full-time employment effective February 25, 2008, by her physician. Upon receiving the release to return to work, Ms. Beller planned to inform the company of her release and to return to work. The claimant, however, was informed that day by telephone message that she had been discharged from employment (See Claimant's Exhibit One). The claimant had attempted, to the best of her ability, to provide all medical documentation required by the company and believed that her doctor had supplied any and all documentation that had been requested.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant was separated from employment under disqualifying conditions and whether the claimant is or has been able and available for work within the meaning of the Iowa Employment Security Act.

The evidence in the record establishes that the claimant began a leave of absence at her request for medical reasons effective February 4, 2008, and was medically unable to return to employment until February 25, 2008, when she obtained a release from her physician. The administrative law judge concludes that the claimant was not able and available for work during this period of time, based upon the claimant being on approved leave of absence from her employer.

The evidence in the record further establishes that the claimant was discharged from employment effective February 22, 2008. The claimant was notified of her discharge via telephone message and by letter (See Exhibit Number One).

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 administrative law judge concludes that the claimant's discharge from employment on February 22, 2008, was non-disqualifying. No evidence of intentional misconduct on the part of the claimant has been placed in the record. The claimant testified that she provided all

documentation requested by the employer and believed that her doctor had provided the documentation as requested.

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Based upon the evidence in the record, the administrative law judge concludes that the claimant is able and available for work effective February 25, 2008, based upon her full release by her physician to return to full-time work and her testimony that she is actively and earnestly seeking re-employment by contacting prospective employers each week that she claims benefits.

DECISION:

The representative's decision dated March 26, 2008, reference 01, is hereby reversed. It is held the claimant was discharged by the employer effective February 22, 2008, under non-disqualifying conditions. The claimant is held to be ineligible to receive unemployment insurance benefits based upon her ability and availability for the period of February 4, 2008, through February 25, 2008, when she released by her physician.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw