IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PATRICIA D HAMMER
Claimant

STREAM INTERNATIONAL INC
Employer

APPEAL NO. 08A-UI-06881-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/22/08 R: 01
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Patricia Hammer (claimant) appealed a representative's July 25, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Stream International (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 12, 2008. The claimant participated personally. The employer participated by Staci Albert, Human Resources Generalist, and Hanna Cook, Human Resources Recruiter. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 2, 2007, as a full-time customer service representative. Company policy states that an employee may use one Personal Leave of Absence every other year. An employee is eligible to use a Medical Leave of Absence once per year but has to be employed by the company for six months before one is granted.

In August 2007, the claimant requested a Medical Leave of Absence. The employer could not grant one because she had not been employed for six months. To give the claimant the time off, the employer issued the claimant a three-week Personal Leave of Absence. In May 2007, the claimant needed a Personal Leave of Absence for issues related to her son. The employer could not grant another Personal Leave of Absence until August 2009. To give the claimant time off, the employer issued the claimant a Medical Leave of Absence.

The claimant was absent from work due to the above stated issues and properly reported illness. The employer issued the claimant a final written warning for absenteeism.

On June 5, 2008, the claimant notified Human Resources that she needed to take a Personal Leave of Absence. She received an eviction notice and had to take time off to look for another

residence for herself, her husband, her four children and grandchild. The eviction notice was dated March 13, 2008, and gave her thirty days to exit the premises. The claimant did not find the letter in her residence until June 5, 2008. Human Resources told the claimant to complete paperwork for the leave and the company would determine if the claimant qualified. Later that day Human Resources notified the claimant that no leave was available because the claimant had used her Personal Leave and Medical Leave of Absence allotted by the employer's policies.

Human Resources explained that the claimant had used all her leave time and she was in termination status due to her absences. The claimant asked if she would be terminated if she returned to work. Human Resources told the claimant she would be terminated if she returned to work. The claimant chose to quit work rather than be terminated so she would be eligible for rehire in six months.

On June 9, 2008, at 11:23 a.m. the employer's corporate office tentatively approved the claimant's leave from June 5 through 12, 2008. At 3:38 p.m. on June 9, 2008, the corporate office denied the leave request.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

The first issue is whether the claimant voluntarily quit without good cause attributable to the employer.

871 IAC 24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

If an employee is given the choice between resigning or being discharged, the separation is not voluntary. The claimant had to choose between resigning or returning to work and being fired. The claimant's separation was involuntary and must be analyzed as a termination.

The issue becomes whether the claimant was discharged for 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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of misconduct at the hearing. The claimant's final incident was a request for time off. Human Resources placed the claimant in termination status when she requested the time off the corporate office did not. All previous absences had been for a properly reported illness or approved by the employer. Even the claimant's last absence on June 5, 2008, was tentatively approved by the employer's corporate office. It appears the corporate office was unaware of what its Human Resources Generalist was saying to the claimant. The employer, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 25, 2008 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs