

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA M PETERSON
Claimant

APPEAL NO. 14A-UI-02208-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 01/19/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 18, 2014, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on April 7, 2014. Claimant participated. Employer did not participate but did submit documents for the hearing which were entered and received into the record as employer's exhibits one.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a customer support agent beginning on March 17, 2013 through January 17, 2014 when he was discharged.

The claimant was written up on January 5, 2014 for missing work on December 28. With that write-up he reached 6.5 points. Under the employer's policy, discharge occurs at 8.00 points. The claimant had missed work without excuse on January 1, 2014, thus reaching 7.5 points. He was not written up for missing work on January 1 until his discharge on January 17, 2014. The claimant denies being late for or missing work on January 17. When he arrived at work that day his badge was deactivated and he was told he was discharged. The claimant had not reached eight points yet under the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The employer discharged claimant prior to reaching eight points under their policy. As the employer did not follow their own attendance policy, the administrative law judge concludes they have not met their burden to establish disqualifying excessive absenteeism. Benefits are allowed.

DECISION:

The February 18, 2104, (reference 02) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css