

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD A PLUCKER
Claimant

APPEAL NO. 10A-UI-07000-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

**Original Claim: 04/04/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Richard Plucker filed an appeal from a representative's decision dated April 29, 2010, reference 01, which denied benefits based on his separation from Stream International, Inc. After due notice was issued, a hearing was held by telephone on June 29, 2010. Mr. Plucker participated personally. The employer participated by Monica Ensminger, Human Resources Generalist, and Lisa Foreman, Team Manager.

ISSUE:

At issue in this matter is whether Mr. Plucker was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Plucker began working for Stream International, Inc. on October 15, 2008 as a full-time technical support professional. He was discharged because of his attendance. An absence falls off an individual's attendance record six months after it occurs.

Mr. Plucker received a verbal warning regarding his attendance on March 2, 2010. His last day at work was March 29. He did not call to report his absence of March 30 and, therefore, was written up on March 31. He reported his absences of March 31 and April 1, but did not specify a reason for either date. He was not scheduled to work on April 2 and 3. He called on April 4, but did not report the absence of April 5. He called to say he would be absent on April 6 and 7, but did not specify a reason for either absence. He was notified of his discharge on April 7.

The employer tried to call Mr. Plucker on March 31, April 2, April 5, and April 6. They were not able to reach him on any of the above dates. Mr. Plucker did not cite illness when he called in his absences after March 31. There is a specific code the worker is to use if the absence is due to illness. Attendance was the sole reason for Mr. Plucker's discharge on April 7, 2010.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if he was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Mr. Plucker was warned about his attendance on March 2, 2010. In spite of the warning, he was absent without calling in on March 30 and again on April 5. Both absences are unexcused, as they were not properly reported. He did not report that his absences after March 31 were due to illness. Therefore, it is questionable as to whether they were for any reasonable cause. However, the two unexcused absences of March 30 and April 5 are sufficient to establish misconduct. The two unexcused absences occurred within a one-week period of time and after he had been warned about his attendance. It is concluded, therefore, that the absences of March 30 and April 5 constituted excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated April 29, 2010, reference 01, is hereby affirmed. Mr. Plucker was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw