

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN M GRAN
Claimant

APPEAL NO. 10A-UI-11537-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 07/18/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's August 17, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. A telephone hearing was held on September 29, 2010. The claimant participated in the hearing. Monica Ensminger appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 18, 2010. He worked as a full-time technical support professional on the Apple contract.

During his employment, the employer gave the claimant a verbal warning on March 27 for reporting 26 minutes late for work on March 26. On March 26, the claimant called when he had car trouble and could not get his car started. On March 31, the claimant contacted the employer to report he had strep throat and was unable to work. Even though the claimant provided the employer with a doctor's statement, on April 1 the employer gave him a written warning for missing work. On April 6, the claimant was five hours late for work. The employer's records indicate the claimant was late because of allergies. The claimant's daughter was involved in an accident and injured her ear, which resulted in an 80 percent hearing loss. She had surgery the morning of April 7. On April 7, the claimant was 29 minutes late for work.

The claimant was scheduled to work at 10 a.m. on April 8. He called the hospital before he reported to work to find out how his daughter was. At that time, the doctor did not know. At lunch, the claimant went home and called the hospital to get an update on his daughter's condition. The claimant waited on the phone until he was able to get his daughter's condition.

On his way back to work, the claimant had to wait for a train. The claimant was 22 minutes late from returning from his one-hour lunch on April 8.

Shortly after the claimant returned from lunch on April 8, the employer talked to him, had him sign several papers, and discharged him for continued attendance issues. The employer's records indicate the claimant signed written warnings for attendance issues that occurred on April 6 and 7. The claimant does not remember receiving any written warnings after April 1 and may have signed these written warnings when the employer discharged him.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established justifiable business reasons for discharging the claimant. Based on his recent attendance, the claimant did not demonstrate that he was a dependable or reliable employee. The claimant's recent attendance issues occurred after his daughter had emergency surgery and he tried to obtain updated information about her condition the day after the surgery. The claimant may have used poor judgment when he stayed on the phone to talk to his daughter's physician, but he, under the circumstances, established reasonable grounds for being late on April 6, 7, and 8. When the claimant left for lunch on April 8, he had no idea his job was in jeopardy because he had not received any warnings since April 1.

The employer discharged the claimant for business reasons. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of July 18, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's August 17, 2010 decision (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons. While the claimant did not demonstrate that he was a reliable employee, he did not commit work-connected misconduct. As of April 4, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge under the claimant's July 18, 2010 claim.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw