

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM P POZNANSKI
Claimant

APPEAL NO. 09A-UI-11943-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

**Original Claim: 07/12/09
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Adam P. Poznanski filed a timely appeal from an unemployment insurance decision dated August 13, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Sioux City, Iowa, September 16, 2009, with Mr. Poznanski participating. Human Resources Generalist Staci Albert, Team Manager Rachel Twin, and Team Manager James Hanson participated for the employer, Stream International, Inc. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Adam P. Poznanski was employed by Stream International, Inc. from May 7, 2007, until he was discharged on July 15, 2009. He last worked as a customer support professional. He was discharged for repeatedly exceeding the 15-minute breaks, three of which were allowed per 10-hour shift. Break time is measured by the company by monitoring the time that employees are logged on at their work stations. Mr. Poznanski received warnings for exceeding his break time on March 24, 2009, and June 24, 2009. The latter warning was characterized as a final warning. He was discharged July 15, 2009, after company records established that he had exceeded allowable break time on July 1, 3, 6, 7, 8, 10, 13, and 14, 2009. At the time of his discharge, Mr. Poznanski asked for another chance. He did not, at that time, indicate that he was delayed in returning to his own workstation following breaks because of requests for assistance from coworkers.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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's testimonial and documentary evidence establish the pattern of excessive break time. Mr. Poznanski testified at the hearing that at least some of the excessive break times occurred because of requests for assistance from coworkers made at the time he was returning from break. This testimony is not corroborated. It was countered by the employer's testimony that it had not been raised at the time of discharge. The administrative law judge concludes that the employer's testimony is the more credible. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated August 13, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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