

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY RIEDY
Claimant

APPEAL NO: 13A-UI-06306-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04/07/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 17, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 3, 2013. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Bong Chanthavong, Human Resources Generalist and Anthony Smith, Team Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer support professional for Stream International from August 27, 2012 to February 21, 2013. She was discharged for failing to verify confidential account information.

The employer is an inbound call center for Visa. The claimant was trained extensively, beginning on her first day of employment, on the importance of verifying account holder information and reminded throughout her employment of the necessity for verification as that is the most important aspect of the job. On February 13, 2013, one of the claimant's customer calls was randomly monitored and the claimant gave private customer account information to an unverified bank representative (Employer's Exhibit One). The employer was notified of the breach and met with the claimant February 15, 2013, and issued her a final written warning regarding the incident (Employer's Exhibit One). The warning stated that "any further incidents of this nature will result in further disciplinary action up to and including dismissal" (Employer's Exhibit One). The claimant signed the warning (Employer's Exhibit One).

On February 20, 2013, the claimant was again randomly monitored and again failed to secure the required information from the customer. She provided confidential account information and made changes to the account before obtaining the last four digits of the customer's social security number (Employer's Exhibit Two). The employer was even more concerned with this incident than when it happened February 13, 2013, because it occurred just five days after she received a final written warning and the employer explained the verification process to the claimant again.

If employees do not verify the information from a cardholder, the cardholder could be vulnerable to identity theft, which the client would have to cover. If employees do not verify the identity of the bank representative, it could cause a loss of trust in the client and potentially the loss of business for the client, as well as the loss of the customer for the employer.

After the claimant's second violation in five days, the employer met with her February 21, 2013, and notified her that her employment was terminated for failing to comply with the employer's verification practices and policies (Employer's Exhibit Two).

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant divulged confidential client account information to a bank representative calling February 13, 2013, without verifying the caller. She received a final written warning February 15, 2013, as a result of her actions but just five days later she repeated her infraction by failing to verify the last four digits of a cardholder's social security number before providing her with confidential information and allowing her to make changes to the account. Because confidentiality and security are the employer's number one priority it trains employees on those aspects of the job from their first day and continues reminding employees and training them on that issue throughout their employment. The claimant worked for the employer long enough to know how important this issue is, not only to the employer but to the customers and client, who could both suffer great damage if the information is not properly verified. The claimant knew or should have known her job was in jeopardy when she received the final written warning February 15, 2013, but despite that warning her behavior continued.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The May 17, 2013, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs