

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAM P MORENO
Claimant

APPEAL NO. 08A-UI-02256-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 01/27/08 R: 01
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Stream International (employer) appealed a representative's February 25, 2008 decision (reference 01) that concluded Sam Moreno (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 21, 2008. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Jacqueline Kurtz, Human Resources Recruiter, and Aaron Dodd, Team Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 5, 2007, as a full-time customer service representative. The claimant signed for receipt of the employer's handbook on November 5, 2008. The employer issued the claimant a written warning on December 26, 2007, for attendance issues. The claimant was tardy for work due to transportation issues on January 1, and 2, 2008. The employer issued the claimant a written warning on January 1, 2008, and a verbal warning on January 2, 2008. The employer notified the claimant that further infractions could result in termination from employment. On January 12, 2008, the claimant was absent due to lack of transportation.

On January 14, 2008, the claimant worked, left for lunch, and did not return. The employer telephoned the claimant. The claimant said he would return. When the claimant did not return by 3:00 p.m., the employer left the claimant a message saying he needed to call in before 5:00 p.m. or he would be considered to have resigned. The claimant did not call in. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He left the job site and quit work. When an employee quits work after having been reprimanded, his leaving is without good cause attributable to the employer. The claimant left work after having been reprimanded. His leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's February 25, 2008 decision (reference 01) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw