

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN JEWELL**

Claimant

**APPEAL NO. 14A-UI-07564-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**

Employer

**OC: 06/22/14**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Stream International, Inc. filed a timely appeal from a representative's decision dated July 14, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 14, 2014. Claimant participated. Participating as a witness for the claimant was Mr. Kim Kirkpatrick, former employee. The employer participated by Ms. Staci Albert, Human Resource Manager; Ms. Laura Karmann; Mr. Barry Belcher; and Ms. Sharon Robertson.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Brian Jewell was employed by Stream International, Inc. from December 12, 2011 until June 25, 2014 when he was discharged from employment. Mr. Jewell held the position of full-time operations manager and was paid by salary. His immediate supervisor was Mr. Barry Belcher.

Mr. Jewell was discharged on June 25, 2014 based upon the employer's belief that the claimant had violated company policy by authorizing Kim Kirkpatrick to be paid for working weekends on June 14, 15, and 21 when Mr. Kirkpatrick had not worked those days. Under company policy, employees leaving the employ of Stream International, Inc. are not paid for accrued unused sick or vacation time they have not utilized prior to their date of separation. Company policy also requires that an employee must work on their last day of employment and cannot use vacation time for their last work day.

On approximately May 21, 2014 Kim Kirkpatrick, a team manager, provided a notice of his intention to resign, effective June 7, 2014. Subsequently, Mr. Kirkpatrick became concerned about the substantial amount of vacation time that he had accrued but had not used. Mr. Kirkpatrick spoke to Ms. Robertson in the company's Human Resource Department.

Various options were discussed. When Ms. Robertson suggested that Mr. Kirkpatrick extend his resignation date to June 21, 2014 and use vacation or sick time prior to his last day of work, Mr. Kirkpatrick agreed and submitted a revised resignation making his date of leaving effective June 21, 2014. Mr. Kirkpatrick spoke with the claimant about the matter and informed Mr. Jewell of the plan that would allow Mr. Kirkpatrick to utilize his accrued vacation prior to his last official day of work with the company. Under the plan Mr. Kirkpatrick would use vacation time during the scheduled work week but would report on weekend dates of June 14, 15, and 21 to run performance reports and monitor calls for employees.

Because Mr. Kirkpatrick did not normally directly report to the claimant, Mr. Jewell was not aware that the claimant had not reported for the agreed upon work shifts on June 14, 15, and 21, 2014. Mr. Kirkpatrick normally would have given a notice of his pending absences to another management person in the company.

Mr. Kirkpatrick did not report to work because he was actively seeking employment and living quarters on June 14 and 15 and because he was faced with a flooding emergency on June 21, 2014. Mr. Jewell, the claimant, was not aware that Mr. Kirkpatrick had not reported and it appears that Mr. Kirkpatrick had not provided this information to the person he directly reported to in the company. When contacted about the matter Mr. Kirkpatrick indicated that the authority to extend his resignation had come from Ms. Robertson, in the company's Human Resource Department. Laura Karmann was the person that Mr. Kirkpatrick directly reported to and was responsible for approving and reviewing time cards. Review of the time cards showed that they had been approved by Ms. Karmann.

At the Center Director's request, the claimant contacted Mr. Kirkpatrick and informed him that he would not be paid accrued vacation time because he had not worked the agreed upon hours. Because of the employer's concern that vacation pay had been authorized to the disseminated in a manner that was contrary to the employer's policies, company management met with the claimant based upon the employer's belief that Mr. Jewell had provided preferential treatment to Mr. Kirkpatrick because of their personal friendship. A decision was made to terminate the claimant from his employment.

Mr. Jewell denies being aware that Mr. Kirkpatrick was not working the weekends as agreed and that company policy had been violated. The error had been found and Mr. Kirkpatrick had not been paid vacation pay although Mr. Kirkpatrick would have been authorized to receive vacation pay had Mr. Kirkpatrick worked the agreed upon weekends that he had previously agreed to.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing job disqualifying misconduct. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that job separation.

In the case at hand, the evidence in the record establishes that an employee, Kim Kirkpatrick, planned to leave the company on a set date but prior to leaving wished to use some or all of the accrued vacation time that was available to him. A representative of the company's Human Resource Department suggested that the employee change the effective date of his resignation so that he could use accrued vacation time during the intervening weeks. Based upon that recommendation, the employee talked with the claimant and it was agreed that the employee would work on specified weekends and would be claiming vacation pay during the weeks between the scheduled weekend work. Because the employee did not directly report to Mr. Jewell, the claimant was unaware that the employee was not reporting to work on those

weekends as agreed and that the employee may not have been eligible to receive vacation pay because he had not performed the requirements of the agreement. The company's policy required the employee to report to work on his last day and not use vacation time for the last day of reporting to work.

Although other management individuals may have been more closely associated with suggesting the manner of receiving the vacation pay and monitoring whether Mr. Kirkpatrick was reporting to work or not, the employer concluded that Mr. Jewell was at fault in the matter because it was perceived that Mr. Jewell had personal friendship with Mr. Kirkpatrick, the employee, and that the agreement between Mr. Kirkpatrick and the claimant had been made in an effort to provide preferential treatment to Mr. Kirkpatrick that was not given to other workers.

The administrative law judge concludes, based upon the evidence in the record, that the claimant did not provide preferential treatment to Mr. Kirkpatrick but only followed a course of action that had been suggested by an individual in the company's Human Resource Department. The monitoring of Mr. Kirkpatrick's attendance was not the claimant's responsibility and the claimant had no knowledge that Mr. Kirkpatrick was not reporting as agreed.

Benefits are allowed, provided the claimant is otherwise eligible. The evidence in the record does not establish intentional disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits.

**DECISION:**

The representative's decision dated July 14, 2014 (reference 01) is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided that the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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