

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS J SWEISBERGER**  
Claimant

**APPEAL NO: 10A-UI-09322-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**OC: 05/23/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Stream International, Inc. (employer) appealed a representative's June 17, 2010 decision (reference 01) that concluded Travis J. Sweisberger (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2010. The claimant participated in the hearing. Debbie Nelson appeared on the employer's behalf and presented testimony from two other witnesses, Hanna Cook and Todd Quint. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 29, 2008. He worked full time as a team manager at the employer's Sergeant Bluffs, Iowa call center. His last day of work was May 26, 2010. The employer discharged him on that date. The reason asserted for the discharge was fraternization with subordinates in violation of the employer's anti-harassment policy.

On May 26 someone sent an email to the employer's human resources department claiming to be a female employee of the business; the email was purportedly a complaint of inappropriate behavior on the part of the claimant toward the supposed author of the email. The employer subsequently determined that the email was not sent by the female employee herself, but in interviewing that employee she did assert that the claimant had engaged in an inappropriate relationship with her, including sending messages of a sentimental nature, during a time he was her supervisor. The employer interviewed other employees and concluded that there had been several female employees with whom the claimant had personal, possibly romantic, relationships. As a result, the employer determined to discharge the claimant.

When the employer confronted the claimant, it did not identify what employee was being referred to. The claimant did admit to having a romantic relationship with an employee, and he assumed that was the employee with whom the employer was concerned; his response was that he had not been that employee's supervisor. In fact, the employee with whom the claimant admitted having a romantic relationship was not the same employee who was the focus of the employer's concern. The employer did not establish that the employee with whom the claimant admitted having a romantic relationship was under his supervision. The claimant denied having a romantic relationship with the employee who was the focus of the employer's concern, and denied any inappropriate behavior towards her.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant fraternization or having an inappropriate relationship with a subordinate contrary to its policy. The employer presented only second-hand information regarding the allegations. The claimant denied the allegations. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact had a relationship or behaved inappropriately with a subordinate. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 17, 2010 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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