

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RON L COUNTER**  
Claimant

**APPEAL NO: 13A-UI-01830-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**OC: 12/23/12**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's February 6, 2013 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Tonya Mellick and Bangone Chanthavong appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in September 2011. He worked as a full time customer support professional. Since November 2012, Mellick supervised the claimant.

The claimant started experiencing personal issues in May or June. The employer started noticing problems with the way the claimant talked to customers in August 2012. The employer talked to him in August and provided him with a brochure about the employee assistance program. The claimant did not believe counseling would benefit him. He did not pursue the employee assistance program. The claimant knows he has a problem of talking over people and argues a point when he believes he is right.

The employer monitors all calls. On October 3, 2012, the claimant received his first written warning for treating customers rudely and unprofessionally. From July through September 2012 the claimant had a low score for customer satisfaction. On surveys customers made comments that the claimant needed an attitude improvement, the claimant needed to act in a more professional way and that he could be more pleasant. (Employer Exhibit One.) The claimant apologized to the employer and indicated he would try harder. His supervisor in October, Scott Putney, told the claimant that to correct his problems he would not speak rudely or unprofessionally to customers, he would listen and allow customers to voice opinions, he would

not interrupt customers, he would not speak in a condescending manner, he would not express his opinions and he would not quote policy, but handle customers with courtesy and respect. (Employer Exhibit One.)

The claimant received a final written warning on October 23, 2012. The employer gave him this warning because from October 5 through 23, customers again reported the claimant had been rude, unfriendly and gave an attitude when a customer asked to speak to a supervisor. Another customer reported that the claimant was not friendly and would not cancel a subscription after the customer made numerous requests to cancel a subscription. The October 23 final warning informed the claimant that future incidents could result in his termination. (Employer Exhibit Two.)

On December 12, 2012, the claimant received a score of zero on a call for being unprofessional and rude to a customer. When the employer met with the claimant on December 12 about the zero score he received, the employer told the claimant to put himself in the customer's shoes and to tell customers he was sorry. The claimant responded by saying when they are not nice to me, why should I have to be nice to them.

On December 20, a customer called to pay a bill. The claimant argued with the customer when he told the customer he was not a VIP customer when in fact the customer was. The claimant also interrupted the customer and talked over him. The customer asked to speak to a manager and was not immediately transferred. When the customer talked to a manager, he reported the claimant had been rude, unprofessional and gave him incorrect information.

On December 28, 2012, the employer discharged the claimant for repeatedly failing to be courteous and professional to customers he talked to. The claimant violated the employer's policy for being rude, unprofessional and confrontational to customers. Before he was discharged, the claimant had asked to be transferred to another area that was less stressful. His transfer was denied because he had too many points which made him ineligible for a transfer.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While it is unfortunate the claimant was experiencing personal issues, he allowed his personal issues to affect the way he treated customers. After he received the final written warning on October 23, 2012, he knew or should have known his job was in jeopardy. The claimant's December 12, 2012 comment amounts to a disregard of the standard of behavior the employer

had a right to expect from him. On December 20, when he argued with a customer and then failed to immediately transfer the customer to a manager also amounts to a disregard of the standard of behavior the employer had a right to expect from him. The employer established the claimant was discharged for work-connected misconduct. As of December 23, 2012, the claimant is not qualified to receive benefits.

An issue of overpayment or whether he is eligible for a waiver of any overpayment of benefits he may have received since December 23, 2012, will be remanded to the Claims Section to determine.

**DECISION:**

The representative's February 6, 2013 determination (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 23, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

An issue of overpayment or whether the claimant is eligible for waiver of any overpayment of benefits he may have received since December 23, 2012, is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs