

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA J TAYLOR
Claimant

APPEAL NO. 09A-UI-06271-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 03/29/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated April 17, 2009, reference 01, which found claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 19, 2009. The claimant participated personally. The employer participated by Ms. Stacy Albert, Human Resource Generalist and Ms. Lisa Frommelt, Team Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant was employed as a customer service representative for the captioned company from June 16, 2008 until March 25, 2009 when she was discharged for excessive absenteeism. Ms. Taylor was employed on a full-time basis and was paid by the hour. Her immediate supervisor was Lisa Frommelt.

The claimant's last day of work was March 11, 2009. The claimant called in each day reporting that she was going to be absent due to injuries sustained in a non-work-related motor vehicle accident. The claimant repeatedly promised to report to work the next day but was unable to do so due to continuing back problems associated with her injuries. The claimant stated to her employer that she had medical documentation to support her continuing need to be absent for medical reasons. When the claimant failed to report for work by March 25, 2009, the claimant's immediate supervisor attempted to personally contact the claimant by telephone. Ms. Frommelt left a message indicating that the claimant must provide medical documentation to support her continuing need to be absent by 5:00 p.m. that day or be discharged. The claimant returned the call after the close of business that day and was informed that she had been terminated from employment.

It is the employer's position that they believed that Ms. Taylor was not being candid because the claimant should have received numerous messages on her cell telephone regarding the necessity that she return to work and provide medical documentation. It is the employer's further position that the claimant did not attempt to contact any other management individuals after being informed that she was discharged via telephone on March 25, 2009. Under established company policies employees are expected to provide medical documentation to support their need to be absent if they are absent for more than three or four consecutive work days.

REASONING AND CONCLUSIONS OF LAW:

The evidence in this case establishes that Ms. Taylor followed company policy by calling in each day to report her impending absences. The evidence establishes that the claimant reported each day that she continued to be absent due to injuries sustained in a motor vehicle accident that had occurred on March 11, 2009. The claimant believed that she was required to provide medical documentation when she returned to work and planned to do so. Ms. Taylor testified under oath that her cellular telephone became disabled and she was unable to receive a number of calls from the employer indicating that she must provide medical documentation prior to her return date. The claimant testified that when she received the message regarding medical documentation it was after the close of business on March 25, 2009 but although she spoke to her supervisor after receiving the message she was nonetheless discharged.

The Iowa Supreme Court in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct. The court held that the absenteeism must be excessive and unexcused. The court further held that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer. The evidence in this case establishes that Ms. Taylor properly notified the employer each day of her continuing absences due to a medical condition.

Although the administrative law judge notes that the claimant's testimony regarding the inoperability of her cell phone strains credibility; the administrative law judge must nevertheless rule that based upon the above cited criteria set forth by the court in the Higgins case, disqualifying misconduct on the part of the claimant has not been shown.

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.

DECISION:

The representative's decision dated April 17, 2009, reference 01, is affirmed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs