

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J KEANE

Claimant

APPEAL NO. 10A-UI-08678-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

OC: 04/18/10

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Keane (claimant) appealed a representative's June 9, 2010 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Stream International (employer) for violation of a known rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 4, 2010. The claimant participated personally. The employer participated by Staci Albert, Human Resources Generalist, and Erin Lillie, Team Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 8, 2008, as a full-time customer support professional. The claimant signed for receipt of the employer's handbook on December 8, 2008. The employer had discussions with the claimant on August 19, 21, September 17, 28, and October 20, 2009, after female employees complained that the claimant was behaving inappropriately. Either the claimant was trying to socialize on a personal level with coworkers or he was argumentative with female subordinates. The employer notified the claimant that further infractions could result in termination from employment. On November 16, 2009, the employer issued the claimant a final written warning for inappropriate behavior with a co-worker. The employer notified the claimant that further infractions could result in termination from employment. The claimant thought the workplace was provocative. He thought that if co-workers dressed in a provocative way, they were open to having fun and personal conversations with him.

On December 12, 2009, the supervisor made a standard announcement over the loud speaker. The claimant left a customer on the telephone to ask the supervisor what was said. The claimant became aggressive, agitated and loud. The supervisor felt threatened. The employer suspended the claimant on December 12, 2009, and terminated him on December 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions regarding personal conversations with confrontations with females. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's June 9, 2010 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. 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/css