

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW D MCQUILLEN**  
Claimant

**APPEAL NO. 08A-UI-05466-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**OC: 05/11/08 R: 01  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Stream International, Inc. (Stream), filed an appeal from a decision dated June 6, 2008, reference 01. The decision allowed benefits to the claimant, Andrew McQuillen. After due notice was issued a hearing was held by telephone conference call on June 24, 2008. The claimant participated on his own behalf. The employer participated by Human Resources Recruiter Jacqueline Kurtz and Team Operations Manager Andrew Eberhart.

**ISSUE:**

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

**FINDINGS OF FACT:**

Andrew McQuillen was employed by Stream from June 5 2007 until May 12, 2008, as a full-time technical support representative. On October 5, 2007, he received a first and final written warning for hanging up on a customer.

May 11, 2007, Team Operations Manager Andrew Eberhart was doing his monthly quality evaluations. He routinely monitors two calls per month for each of his team members. The call he monitored of the claimant's was from April 29, 2008. In this call the claimant had been rude to the customer, interrupting her, refusing to answer her general technical questions, and being sarcastic to the point of berating her for her lack of technical knowledge. The customer asked him to transfer her to another technical support representative and he refused, saying it was "not possible," although it was. She then asked to be transferred to his supervisor and again he said it was "not possible," though it was. When she asked a second time to talk to his supervisor he agreed and then disconnected the call.

Mr. Eberhart reviewed the recording with the Service Delivery Manager Stormie Westphal and it was agreed to refer it further to the human resources department. Human Resources Manager Chris Clausen also listened to the recording and agreed discharge was the proper action given

the claimant's previous warning. Mr. Eberhart and Mr. Clausen notified the claimant on May 12, 2008, he was discharged for being rude to a customer.

Andrew McQuillen has received unemployment benefits since filing a claim with an effective date of May 11, 2008.

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

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 claimant had been advised his job was in jeopardy as a result of rudeness to a customer. The supervisor had listened to the recording and personally witnessed Mr. McQuillen's interaction with the customer and was specific about what was said by the claimant to the customer. Although the claimant denied all the allegations, he could not provide any reason why his supervisor would manufacture these stories in order to discharge him. The administrative law judge does not find his denial to be credible.

Mr. McQuillen was discharged for being rude to a customer, telling her a transfer to another representative or a supervisor was "not possible" which was a falsehood, and hanging up on her. This rudeness to a customer could have cost the employer customer goodwill and future business. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of June 6, 2008, reference 01, is reversed. Andrew McQuillen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,036.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs