

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORBIN WHEATON**  
Claimant

**APPEAL NO: 13A-UI-11574-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**OC: 09/15/13**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Stream International, Inc. (employer) appealed an unemployment insurance decision dated October 3, 2013, reference 01, which held that Corbin Wheaton (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 6, 2013. The claimant participated in the hearing. The employer participated through Sharon Robertson, Senior Human Resources Manager and Erica Hess, Team Manager Operations. Employer's Exhibits One through Three were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**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 employed as a full-time customer support representative from July 9, 2012 through September 11, 2013 when he was terminated for excessive absenteeism. He had received a previous warning for attendance and was a no-call/no-show from September 8, 2013 through September 11, 2013. The claimant had requested a leave of absence on September 2, 2013 but it takes approximately two weeks to approve and his leave had not yet been approved.

The claimant filed a claim for unemployment insurance benefits effective September 15, 2013 and has received benefits after the separation from employment in the amount of \$1,435.00.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It

is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was discharged on September 11, 2013 after four days of failing to call or report to work. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The claimant had been warned about his attendance and his excessive absences were not excused. Benefits are therefore denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the discharge. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$1,435.00.

**DECISION:**

The unemployment insurance decision dated October 3, 2013, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,435.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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