

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA J CURTIS

Claimant

APPEAL NO. 08A-UI-02295-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

**OC: 02/03/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 28, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 24, 2008. Ms. Curtis participated personally. The employer participated by Jacqueline Kurtz and Rebecca Toben. Employer's Exhibits One through Seven were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 24, 2007 until January 9, 2008 when she was discharged for violating the company's no-fault attendance policy. Ms. Curtis worked as a full-time technical support representative and was paid by the hour. Her immediate supervisor was Rebecca Toben.

Ms. Curtis was discharged when she exceeded the permissible number of infraction points allowed under the company's no-fault attendance policy. The claimant notified the employer each time that she was going to be absent in advance of the beginning of her work shift as required. Ms. Curtis supplied medical documentation to the company verifying each absence was due to illness. The claimant was most recently absent for a number of days due to mononucleosis and had provided medical documentation to the employer as well as calling in as required.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged for intentional disqualifying misconduct. It does not. The evidence in

the record establishes that the claimant was discharged when she exceeded the number of attendance infraction points allowed under the company's no-fault attendance policy. The evidence in the record establishes that the claimant called in and properly reported each impending absence and provided medical documentation to the employer to support the need for absence due to illness. The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer.

The determination as to whether a claimant's separation from employment is disqualifying is based upon the Iowa Employment Security Act, the Iowa Administrative Code and the facts of each case. The fact that an employee violates a particular policy set in place by an employer does not determine as to whether misconduct in connection with the work has been established.

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.

For the reasons stated herein the administrative law judge concludes that the claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 28, 2008, reference 01, is hereby affirmed. The claimant was discharged under nondisqualifying 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

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