

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOBI A PETERSON

Claimant

APPEAL NO. 08A-UI-04866-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

**OC: 04/20/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 15, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 3, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Jacqueline Kurtz participated in the hearing on behalf of the employer with a witness, Rebecca Tobin. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a support professional from September 25, 2007, to April 17, 2008. The job involved taking incoming calls from customers to troubleshoot problems with their Internet connections. The claimant was informed and understood that under the employer's work rules, hanging up on a customer before completing a call was grounds for discipline. On December 24, 2007, the claimant received a warning after she accidentally hung up on a consumer on December 19. The headset button, which releases a call, is in close proximity to the mute button, which is used when a support professional needs to cough or sneeze. If you miss the mute button slightly and hit the headset button, the call is hung up. This is what happened on December 19, 2007.

On March 26, 2008, the claimant again accidentally released a customer who had called in. She did not call the customer back according to policy because the policy had just been established and she was not used to it yet.

The claimant's supervisor monitored her March 26, 2008, recorded call as part of a routine quality control process on April 17, 2008. The claimant was then discharged for releasing the call and not calling the customer back.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the Agency decided this was not a current act of misconduct, whether something is a current act generally depends on when it is discovered. The call was discovered during routine monitoring on April 17 and the claimant was discharged immediately. It would be considered a current act. The employer may have been justified in discharging the claimant, but work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the

credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she hung up accidentally. Her failure to recall the customer was negligence not willful misconduct.

DECISION:

The unemployment insurance decision dated May 15, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css