

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH J MCNAMARA
Claimant

APPEAL NO. 13A-UI-06780-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04/28/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 3, 2013 (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on July 12, 2013. Claimant participated. Employer participated through Sharon Robertson, Senior Human Resources Generalist and Rick Schwebach, Team Manager. Employer's Exhibits One through Thirty-four were entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a customer support professional beginning on July 23, 2012 through May 2, 2013 when she was discharged. The claimant had been trained repeatedly on the necessity to recap her telephone call and to verify the correct e-mail address for the customer she was speaking with. Despite demonstrating that she could on occasion perform all of the required job duties, she was last heard failing to recap the call and verify the e-mail address on April 26, 2013. She was given repeated escalating warnings for her continued failure to recap the telephone call and to verify the e-mail address. The claimant was given a final written warning on April 16, 2013 that put her on notice that any future failure to recap a call or to verify the e-mail address would result in her termination. A monitor listened to a number of the claimant's calls on April 26 and discovered that again the claimant did not recap the call nor did she verify the customer's e-mail address. The claimant was discharged for her repeated failure to perform all of the required functions of her job. The claimant admitted that she occasionally did not verify the calls.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to accurately perform her job duties after having been repeatedly warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

While the employer may not have had the most elegant way of notifying the claimant her employment had ended, that is not a consideration in determining whether unemployment insurance benefits should be granted.

DECISION:

The June 3, 2013 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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