

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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| 68-0157 (9-06) - 3091078 - EI   |  |
| <b>JENNIFER L ASHCRAFT</b><br>Claimant<br><br><b>STREAM INTERNATIONAL INC</b><br>Employer | <b>APPEAL NO. 07A-UI-07049-DT</b><br><br><b>ADMINISTRATIVE LAW JUDGE<br/>DECISION</b><br><br><br><b>OC: 06/17/07 R: 01</b><br><b>Claimant: Appellant (2)</b> |

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Jennifer L. Ashcraft (claimant) appealed a representative's July 12, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Stream International, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 6, 2007. The claimant participated in the hearing and was represented by Dennis McElwain, Attorney at L. Jacqueline Kurtz appeared on the employer's behalf and presented testimony from one other witness, Staci Albert. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on November 13, 2006. She worked full time as a customer service representative at the employer's Sergeant Bluffs, Iowa, customer service and technical support call center. Her last day of work was June 18, 2007. The employer discharged her on that date. The reason asserted for the discharge was call avoidance.

The claimant had been given a final warning on March 28, 2007 for an incident involving use of a cell phone while on duty and having an excessive statistical call "hold" ratio. On June 18, the claimant had left her desk in the early afternoon for about ten seconds to give a pen to a nearby coworker; her supervisor ordered her then not to leave her desk. Later that afternoon a call routed to the claimant was recorded and monitored in which the claimant was not on the call for the first moments of the call, but came on a short while later thanking the customer for holding. The employer concluded that the claimant had again been away from her desk and so had not been "available" for the call when it had originally been routed to her. However, the claimant had been at her desk and realized after the first few moments of the call that the customer could not hear her, and discovered that the phone had inadvertently been switched to "mute;" she did then switch the phone off "mute" and covered by thanking the customer for holding.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is call avoidance. The employer has not established by a preponderance of the evidence that the claimant engaged in intentional call avoidance. Under the circumstances of this case, the claimant's giving the pen to the coworker and the phone inadvertently being in the "mute" position was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence or was a good faith error in judgment or discretion, as compared to intentional, substantial, or repeated misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's July 12, 2007 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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