

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOWAYA SPARKS

Claimant

APPEAL NO. 10A-UI-06670-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

OC: 04/04/10

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Sowaya Sparks, filed an appeal from a decision dated April 26, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 28, 2010. The claimant participated on her own behalf. The employer, Stream International, participated by Human Resources Manager Debbie Nelson, Team Manager Lisa Foreman and Human Resources Generalist Monica Ensminger.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Sowaya Sparks was employed by Stream International from August 7, 2009 until April 5, 2010 as a full-time technical support professional. It was her job to take incoming calls from customers. On March 31, 2010, the claimant's calls were being monitored and it was discovered she was "avoiding calls." The customer would call in, the claimant would accept the call and then say nothing until the customer hung up. It was determined there were no technical problems on the phone line and this had occurred more than once.

Human Resources Generalist Monica Ensminger was informed of the problem and set up a meeting with Ms. Sparks and Team Manager Lisa Foreman on April 5, 2010. Ms. Sparks was going to be issued a final written warning because her performance to that point had been good and Stream International wanted to maintain her as an employee. At the meeting the claimant was shown the trace report and asked why she was avoiding calls, she said she did not know, she did not care and did not want to take calls any more.

Ms. Foreman asked her what she intended to do in the future in regard to incoming calls and Ms. Sparks only said she did not want to take calls. Human Resources Manager Debbie Nelson was called in because the claimant was becoming agitated. The conversation after Ms. Nelson arrived was much the same with the claimant saying she did not think she would be taking calls

in the future because she did not want to, did not like to and the employer could not make her. Ms. Nelson agreed the employer could not "make" her take calls but it was the essential function of her job and if she would not take calls, she would not have a job. The claimant then suggested the employer fire her and Ms. Nelson did.

REASONING AND CONCLUSIONS OF 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 claimant maintains she was not avoiding calls and never indicated in the April 5, 2010, meeting she would not do so. Ms. Sparks could not explain why the three members of management participating in the hearing would fabricate such a story when they all agreed her performance had been good to that point. The employer did not want to fire her, only give her warning and try to get her to improve her performance. It was only after Ms. Sparks refused to commit to improving her performance and stop avoiding calls that she was fired.

She indicated she would refuse to perform the essential functions of her job and that is what precipitated the discharge. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of April 26, 2010, reference 01, is affirmed. Sowaya Sparks is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs