

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REA R GONZALEZ

Claimant

APPEAL NO. 08A-UI-05309-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

**OC: 04/27/08 R: 01
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 27, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on June 17, 2008. Claimant participated. Employer participated through Jacqueline Kurtz and Todd Gunderson.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time support professional from August 27, 2007 until March 4, 2008 when she was discharged. Her last day worked was March 1 and the last absences were on February 27, 28 and 29. She called the "Intraday" reporting department according to procedure each of those days to report her absence from work due to her diagnosis of influenza A and bronchitis on February 27. She either spoke with Melissa, a new male employee, or left a message. Her young daughter and son were also diagnosed on February 26 and 27 respectively. She was not released to return to work until March 1 and brought medical documentation with her on that date. She gave the paperwork to the Saturday supervisor, Laura Carmen who copied them and returned the originals. On March 1 she was not able to work on the phone for more than an hour and then participated in training exercises that did not require her to use her voice. Her day off was Monday, March 3 and she returned to the doctor who took her off work through March 6. She reported her absence on March 4 and received a telephone message later that day instructing her to report to sign termination papers because she had missed work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Absences related to lack of childcare are generally held to be unexcused. *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. *McCourtney v. Imprimis Technology, Inc.*, 465 N.W.2d 721 (Minn. App. 1991).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. In the case of an illness, it would seem reasonable that employer would not want an employee to report to work if they are at risk of infecting other employees or customers. Certainly, an employee who is ill or injured is not able to perform their job at peak levels. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Because the final absence for which she was discharged was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The May 27, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css