

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAWN C BOSTON
Claimant

STREAM INTERNATIONAL INC
Employer

APPEAL 16A-UI-10197-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/21/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 14, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for failure to follow instructions on the performance of her job. The parties were properly notified of the hearing. A telephone hearing was held on October 3, 2016. The claimant Dawn Boston participated and testified. The employer Stream International Inc. participated through Human Resource Business Partner Staci Albert, Talent Acquisition Supervisor Judy Easton, and Regional Talent Acquisition Manager Jessica Tupper. Employer's Exhibits 1 through 4 were received into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related 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 talent acquisition specialist from April 27, 2015, until this employment ended on August 24, 2016, when she was discharged.

On August 24, 2016, claimant notified Easton she had made a mistake two days earlier and allowed two employees into a training class who had not yet met the pre-hire requirements. Before new hires are allowed to begin, the employer's policies require they pass a background check and drug screening. On the afternoon of August 22, 2016, a new hire class was scheduled to start. The morning of August 22, claimant was in the process of checking to make sure each member of the class had met the pre-hire requirements. Claimant noticed two individuals who still had not had their background checks and drug screenings returned. Claimant made a note of the names and got up to go discuss the situation with Easton.

On her way to Easton's office, claimant was stopped by another employee with an issue that needed her immediate attention. By the time claimant had dealt with this other issue, she had

forgotten she had been on her way to speak with Eaton. Claimant was reminded of this issue two days later, on August 24, when she found the note she had written to herself. Claimant realized the seriousness of this issue, as she had received a written warning on August 10, 2016, for failing to follow the background check policy, and immediately notified Eaton of her mistake. (Exhibit 2). Once the employer discovered this error the decision was made to terminate claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa

Ct. App. 1984). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was an isolated incident of carelessness. Claimant received one prior warning, on August 10, 2016, for failing to following proper background check procedures. Having this warning fresh in her mind on August 22, claimant had every intention of going to Easton prior to the start of a new class that afternoon regarding two employees whose background checks and drug screenings had not come back. On her way to Easton’s office claimant was distracted by another work-related issue. By the time claimant had resolved the other issue she had forgotten that she needed to speak with Easton. As soon as claimant realized her error she immediately reported it to Easton.

Claimant was careless, but the carelessness does not indicate “such degree of recurrence as to manifest equal culpability, wrongful intent or evil design” such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp’t Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed.

DECISION:

The September 14, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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