

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY Y BROOKS**

Claimant

**APPEAL NO. 10A-UI-03895-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**

Employer

**OC: 01/10/10**

**Claimant: Appellant (5)**

Section 96.5-2-a - Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 2, 2010, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 29, 2010. Claimant participated. Employer participated by Debbie Nelson, human resources manager; Elva Connelly, service delivery; Stacy Albert, human resources generalist, and Chris Clausen, human resources generalist. The record consists of the testimony of Debbie Nelson; the testimony of Elva Connelly; the testimony of Stacy Albert; the testimony of Chris Clausen; Claimant's Exhibits A-K; and Employer's Exhibits 1-13.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a customer service call center located in Sargeant Bluffs, Iowa. The call center handles inbound customer service calls. The claimant was hired on October 12, 2009, as a full-time customer service representative. Her last day of work was January 11, 2010. She was terminated on January 15, 2010, for violation of the employer's attendance policy.

The employer's attendance records shows the following:

10.23.09	Late	No reason provide
11.9.09	Absent	No reason provide
12.3.09	Absent	Car Issue
12.12.09	Absent	Medica
12.13.09	Absent	Medica
12.14.09	Absent	Medical – Signed verbal attendance warnin
12.28.09	Absent	Appointmen

12.31.09	Late	Traffic related
1.4.10	Late	Parking
1.8.10	Absent	Car Issues
1.9.10	Absent	Car Issues
1.10.10	Absent	Car Issues

(Exhibit 1)

The employer has a point system for attendance. If an individual reaches 8 points, termination is supposed to result. As of January 10, 2010, the claimant had reached the threshold for termination. She worked on January 11, 2010, and was a no call/no show on January 14, 2010. She was then terminated on January 15, 2010.

### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) The absenteeism must be both excessive and unexcused. The concept includes tardiness. Absence due to matters of "personal responsibility", e.g. transportation problems and oversleeping is considered

unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Absence due to illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7). The employer has the burden of proof to show misconduct.

The evidence in this case has established excessive unexcused absenteeism. The attendance records do show that the claimant missed time from work in December for medical reasons and the testimony established that the claimant was on restrictions due to a work-related injury. However, this accounts for a small percentage of the claimant's other absences. The last five absences were for transportation issues, which are deemed unexcused because transportation to work is a matter of personal responsibility. Since the employer has shown that the claimant was discharged for excessive unexcused absenteeism, misconduct has been proven. Benefits are denied.

**DECISION:**

The decision of the representative dated March 2, 2010, reference 04, is modified without effect. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs