

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS L GUTIERREZ
Claimant

APPEAL NO: 14A-UI-03192-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 02/23/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 18, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from because because he had been discharged for disqualifying reasons. The claimant participated at the April 18 hearing. Bong Chanthavong, a human resource generalist, and Steve Schmit appeared on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2012. The claimant worked as a full-time customer support professional. When the claimant started his employment, he acknowledged that he read and understood the employer's attendance policy. (Employer Exhibits Three and Four.) The attendance policy informs employees that if they accumulate eight attendance points in six months, the employer may discharge them for excessive absenteeism.

The claimant's supervisor for the majority of his employment was C.S. Schmitt became the claimant's supervisor the last three days of his employment. For the last four to five months, the claimant helped train other employees and also worked on computers. The claimant understood that if the employer considered him to have an attendance issue, he would not have been allowed to do that work.

The employer's records indicate that as of October 9, 2013, the claimant had accumulated eight or more attendance points and the employer could have discharged him. Instead, the employer learned the claimant and his girlfriend, who also works for the employer, had daycare issues when they were scheduled to work the same day. The employer then changed the claimant's schedule so their daycare issues would be resolved. On December 27, the employer's records

also indicate the claimant could have been discharged for accumulating eight attendance points. Again, the employer worked with the claimant so his employment did not end. The claimant's final written warning does not list any attendance issues in December 2013. (Employer Exhibit One.)

After it became cold in December, the claimant started experiencing furnace problems at his residence. When there were furnace problems, he took his girlfriend and young baby to a relative's home to keep warm. He properly notified the employer he had would be late or absent and called for a person to look at and repair the furnace. The claimant would call the employer early in the morning, and hoped he could work part of his shift. He had no idea when the furnace repair person would show up at his residence. The first time there was a problem, the furnace repair person cleaned the furnace thinking the filter was clogged. Unfortunately, this did not resolve the furnace problems. The claimant had continuing problems with the furnace. His landlord did not stay at his residence for repairs, instead the claimant stayed. As a result of furnace issues, the claimant was absent on January 22, February 4 and 10, 2014.

On February 11, the employer gave the claimant a final written warning of attendance issues. Since August 13, 2013, the claimant had accumulated 7.5 attendance points. (Employer Exhibit One.) When the claimant received the final written warning he talked to his supervisor, C.S., and another management employee, L. C. He understood that because his furnace was on on-going problems, the employer would not discharge him for points he accumulated for furnace-related absences. C.S. told the claimant that the employer had to record his absences, but the claimant was in no danger of losing of his job. C.S. then told the claimant how some employees had 13 attendance points and were still working.

On February 25, 2013, the claimant woke up and his furnace was not working. Again, he took his family to a relative's home so they would be warm. He again called for his furnace to be repaired. He again properly notified the employer that he would be late for work. Schmitt was now the claimant's supervisor. The claimant waited for the furnace repair person to fix his furnace on February 25. This time, a switch on the furnace was replaced and this resolved the problems he had with the furnace. Schmitt called the claimant later on February 25 to find out if the claimant was coming to work. Since the furnace had just been repaired and there was only an hour left of his shift, the claimant did not report to work on February 25. When the claimant talked to Schmitt, he understood he could make up the time he missed on February 25 during the weekend.

On February 26, 2014, the claimant reported work as scheduled. The employer discharged him for excessive absences because after his February 25 absence he had accumulated 8.5 attendance points within the last six months. (Employer Exhibit Two.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. Iowa Admin. Code r. 871-24.32(8).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. Iowa Admin. Code r. 871-24.32(7)

The claimant acknowledged the employer worked with him when he had daycare issues and made it possible for him to continue his employment. The facts indicate that C.S., the claimant's supervisor for the majority of his employment worked with the claimant. Even though C.S. gave him the February 11, 2014 final written warning, he told the claimant his job was not in jeopardy because of absences that occurred as a result of on-going furnace problems. Since neither C.S. nor L.C. testified at the hearing, the claimant's understanding that his job was not in jeopardy even though he had been absent because of his furnace problems is not disputed. The fact the employer worked with the claimant to resolve his attendance issues and had him training other employees supports the claimant's testimony that his job was not in jeopardy after he received the February 11 final written warning. The employer established justifiable business reasons for discharging the claimant. In this case, the claimant's immediate supervisor gave him a false sense of job security after giving him the February 11 final written warning.

Even if the employer made it very clear that the next time the claimant was absent he would be discharged, the claimant had no control over the problems he experienced with the furnace at his residence. The claimant timely notified the employer when he was unable to work and had to rely on his landlord and the furnace repair people to properly identify and fix the furnace so it would properly heat his residence in the middle of winter. In addition to timely notifying the employer about his absent, the claimant also established reasonable grounds for his absence. The claimant did not commit work-connected misconduct. As of February 23, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's March 18, 2014 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of February 23, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs