

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER C COYLE
Claimant

APPEAL NO: 13A-UI-08724-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 06/30/13
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a representative's July 19, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisaqualifying reasons. The claimant responded to the hearing notice, but was not available for the hearing. She did not contact the Appeals Section during the hearing. Bangone Chanthavong, a human resource generalist, Val Peterson, a team manager, and Steve Schmidt, a team manager, appeared on the employer's behalf.

The claimant contacted the Appeals Section at 3:20 p.m. and asked that the hearing be reopened. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2011. The claimant worked as a full-time customer support professional. The last day the claimant worked was May 29, 2013. She was scheduled to work after May 29, but did not call or report to work.

When the claimant had not called or reported to work on June 3, Schmidt called and left the claimant a message. She returned his call later and indicated she had been in the hospital, but would be at work the next day. The claimant did not call or report to work on June 4 or 5. On June 7, Peterson called the claimant and left a message for her to call before 5 p.m. Peterson tried to find out why the claimant had not called or reported to work. When the claimant had not called by 5 p.m., the employer ended her employment.

The claimant called on Saturday, June 8. Peterson told her that her employment had been terminated when she had not responded by 5 p.m. the day before. Peterson learned the claimant had problems with her medication and had seen her doctor at least one day. Peterson told the claimant she could bring the human resource department a doctor's statement to explain her absence the first week in June and the employer may reinstate her employment. The claimant did not contact the employer again or provide any medical statements.

The claimant established a claim for benefits during the week of June 30, 2013. She has filed weekly claims for the weeks ending July 6 through August 24, 2013. She received her maximum weekly benefit amount of \$239.00 for each week.

The claimant called the Appeals Section at 3:20 p.m. for a 10:30 a.m. hearing. She requested that the hearing be reopened. The claimant knew she had problems with her phone before the 10:30 hearing. She did not contact the Appeals Section before the hearing to request a continuance.

The claimant asserted she waited all morning for a phone call and used her phone that is not dependable to call the Appeals Section. When the claimant could not reach the Appeals Section on her phone she rode her bike to her mother's residence to call the Appeals Section.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

Since the claimant knew her phone was not dependable, it was her responsibility to provide a phone number where she could be contacted for the hearing. At 10:30 a.m. the claimant's phone rang and a message was left for her to contact the Appeals Section immediately. While it is unfortunate, the claimant did not take reasonable steps to participate in the hearing when she knew she had problems with her phone. The claimant did not establish good cause to reopen the hearing. Her request is denied.

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence indicates the claimant initiated her employment separation by failing to call or report to work the first week of June. Even though the employer gave her an opportunity to continue her employment by bringing the employer a doctor's statement to explain her absences, the claimant did not do this. The claimant demonstrated that she quit her employment by failing to call or report to work the first week in June and by failing to provide the employer with a doctor's statement so the employer could excuse her absence. For unemployment insurance purposes, the claimant quit her employment.

The claimant may have had personal reasons for quitting, but the evidence does not establish that she quit for reasons that qualify her to receive benefits. As of June 30, 2013, the claimant is disqualified from receiving benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

The claimant has been overpaid \$1,912.00 in benefits she received for the weeks ending July 6 through August 24, 2013.

The matter of deciding whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3(7)b is remanded to the Claims Section to determine.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's July 19, 2013 determination (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. As of June 30, 2013, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

The issue of whether the \$1,912.00 overpayment of benefits should be recovered from the claimant and charged to the employer is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs