

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY M EASTABROOKS
Claimant

APPEAL NO. 11A-UI-12449-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 08/14/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Stream International, Inc. filed a timely appeal from an unemployment insurance decision dated September 9, 2011, reference 01, that allowed benefits to Tracy M. Eastabrooks. After due notice was issued, a telephone hearing was held October 17, 2011, with Ms. Eastabrooks participating. Human Resources Generalist Hannah Cook and Team Manager Judy Easton participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Tracy M. Eastabrooks worked as a customer service professional for Stream International, Inc. from August 16, 2010, until she was discharged August 17, 2011. On August 15, 2011, a co-worker notified human resources of a call from a dissatisfied customer who related earlier telephone calls with Ms. Eastabrooks, alleging that Ms. Eastabrooks had offered promotional items beyond her authority and had exchanged personal phone numbers and photos with the customer. Ms. Eastabrooks acknowledged calling the customer on her personal cell phone while she was off duty in an attempt to help the customer set up a satellite radio. Ms. Eastabrooks was part of a team providing sales and technical assistance to the satellite radio provider. Ms. Eastabrooks had also spent several hours on the phone with the customer while on duty trying to assist the customer. She did not offer promotional items or services beyond the scope of her authority.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. The employer established that the dissatisfied customer had complained of Ms. Eastabrooks in a phone call on August 15, 2011. The employer did not dispute the claimant's testimony that the customer had called repeatedly and had hung up on other customer service professionals. The employer has not proven by a preponderance of the evidence that Ms. Eastabrooks made promotional offers beyond the scope of her authority or that she attempted a personal relationship with the customer.

The administrative law judge considers it extremely poor judgment that the claimant contacted the customer off-duty on her personal phone, even for business reasons. Isolated instances of poor judgment are not considered to be disqualifying misconduct. Based solely on the evidence in this record, the administrative law judge concludes that misconduct has not been established. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated September 9, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw