

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS J HARRISON**  
Claimant

**APPEAL NO. 12A-UI-09221-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**OC: 06/24/12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Admin. Code r. 871-24.32(7) – Absenteeism

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 27, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on August 23, 2012. Claimant participated. Employer participated through human resources generalist Bangone Chanthavong. Employer's Exhibit One was admitted to the record.

**ISSUE:**

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer support professional and was separated from employment on June 20, 2012. On June 19, 2012 claimant called security and was patched through to supervisor Corinne Ruskey and got her voice mail. He left a message that his knee was swollen and he was unable to report to work. He called back and she acknowledged his message and told him to keep her informed. Ruskey's supervisor Andy called him later and told him he was separated.

He missed work on November 10, 2011 due to a non-work-related broken finger injury and on November 18, 2011 he was ill. He had a work-related knee injury in January 2012 and had an MRI at the end of February 2012. He was absent on March 1 and 16, 2012 due to knee pain and had knee surgery on March 24, 2012. He was given a verbal warning about attendance on April 23, 2012. He was cleared to return to work on April 18 after surgery but missed work on April 18, 19, and 20 having reported he was still having pain and taking pain medication that made him oversleep. He reported the absence late to Ruskey on April 18 and she told him not to worry about it since he was only scheduled for four hours per day. Ruskey did not participate. He was issued a written warning about attendance May 4, 2012. He acknowledges he failed to call in or report on May 8 for which he was warned on May 10, 2012. He provided all medical documentation requested. His doctor is allowing him to search for sedentary work.

## 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007). Medical documentation is not essential to a determination that an absence due to illness should be treated as excused. *Gaborit*, supra. Claimant's late call on April 18 is excused because of the medication side effects. See, *Gimbel v. Emp't Appeal Bd.*, 489 N.W.2d 36 (Iowa Ct. App. 1992) where a claimant's late call to the employer was justified because the claimant, who was suffering from an asthma attack, was physically unable to call the employer until the condition sufficiently improved.

The employer has not established that claimant had excessive absences which would be considered unexcused for purposes of unemployment insurance eligibility. Because the absences were related to properly reported illness, injury, or other reasonable grounds, except the no call-no show absence on May 8, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed.

**DECISION:**

The July 27, 2012 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs