

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY M HOGAN
Claimant

APPEAL NO. 08A-UI-01884-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

**OC: 07/15/07 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Stream International, Inc. filed an appeal from a representative's decision dated February 13, 2008, reference 02, which held that no disqualification would be imposed regarding Ashley Hogan's separation from employment. After due notice was issued, a hearing was held by telephone on March 11, 2008. The employer participated by Jacqueline Kurtz, Human Resources Recruiter, and Rachel Twinn, Team Manager. Exhibits One through Four were admitted on the employer's behalf. Ms. Hogan did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Hogan was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hogan was employed by Stream International, Inc. from October 1, 2007 until January 21, 2008 as a full-time customer service representative. She was discharged from the employment because of her attendance.

All of Ms. Hogan's absences prior to January 21, 2008 were due to her own illness, the illness of a child or were occasions when she left work early with permission. She presented doctor's notes for some of the absences. The final absence that triggered the discharge occurred on January 21, 2008. Prior to that date, the last absence was on January 3 when she left work early. Ms. Hogan received warnings regarding her attendance on December 5, 2007 and January 6, 2008.

Ms. Hogan was scheduled to be at work at 6:00 a.m. on January 21, 2008. She called to report that she would be absent because of weather conditions. It was snowing at the time. Of the 19 people on her team, she was the only individual absent the full shift due to weather. One individual was one to two hours late because of weather. As a result of the final absence, Ms. Hogan was notified of her discharge on January 21, 2008. Attendance was the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if she was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

All of Ms. Hogan's absences were properly reported to the employer. The occasions on which she was absent due to either her own illness or that of her child are excused as she had reasonable grounds for being absent. The occasions on which she left work early with the employer's permission are likewise excused. The administrative law judge presumes that the employer had the authority to deny permission to leave early if Ms. Hogan did not present sufficient justification for doing so. For the above reasons, the administrative law judge concludes that all absences prior to January 21, 2008 are excused. Excused absences may not form the basis of a misconduct disqualification, regardless of how excessive.

Ms. Hogan's final absence was due to weather conditions. Given the fact that at least one individual was one to two hours late reporting for work that day due to weather, the administrative law judge concludes that road conditions were, in fact, less than desirable. Ms. Hogan had no control over the weather conditions that prevented her from reporting to work. Even if the administrative law judge were to conclude that the absence of January 21 was an unexcused absence, it would not be sufficient to establish excessive unexcused absenteeism. While the employer may have had good cause to discharge Ms. Hogan because of its attendance requirements, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 13, 2008, reference 02, is hereby affirmed. Ms. Hogan was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css