

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA M SCHAUNAMAN
Claimant

APPEAL NO: 11A-UI-07919-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04/24/11
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 1, 2011 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing scheduled on July 12, 2011. Staci Albert, a human resource generalist, and Jennifer Nelson appeared on the employer's behalf.

On July 20, 2011, the claimant contacted the Appeals Section because she had not received the hearing notice. A July 21 Order was issued that reopened this matter and voided a decision issued on July 13, 2011.

Another hearing was held on August 9, 2011. The claimant was called for the hearing. She did not answer the phone and a message was left for the claimant to contact the Appeals Section immediately. Staci Albert and Jennifer Nelson again appeared for the hearing. When the claimant had not contacted the Appeals Section while the employer was on the phone, the employer agreed a decision could be made based on the testimony presented at the July 12 hearing.

The claimant called the Appeals Section after the employer had been excused and the hearing had been closed. The claimant missed the call at 9:00 a.m. because she had taken her child to the bathroom. After she was finished with this task, she noticed she had a voice mail message and called the Appeals Section. The claimant requested that the hearing again be reopened. Based on the claimant's request to reopen the hearing for a second time, the evidence, the arguments of the employer, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUES:

Is there good cause to reopen the hearing?

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

FINDINGS OF FACT:

The employer rehired the claimant as a full-time employee in September 2010. On December 21, 2010, the claimant received a final written warning for on-going attendance issues. On January 18 and 19, 2011, the claimant did not call or report to work as scheduled.

The employer called the claimant's phone number and left messages on January 18. When the claimant did not call or report to work again on January 19, the employer left a message that day informing the claimant that the employer understood she had voluntarily quit when she had not called or reported to work for two days. Although the employer indicated the claimant could call to explain why she had not called or reported to work for two days, the claimant did not do this.

After the matter was reopened when the claimant did not receive a hearing notice, another hearing was scheduled on August 9. The claimant was not available when she was called for the 9:00 a.m. hearing. A message was left for her to contact the Appeal Section immediately. The claimant was not available for the 9:00 a.m. hearing because she was taking care of her son. By the time the claimant called the Appeals section on August 9, the employer had been excused and the hearing had been closed.

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 hearing was opened when the claimant did not receive the hearing notice for the July 12 hearing, the claimant was responsible for making sure she was available for the second scheduled hearing on August 9. Unfortunately, the claimant forgot about the hearing when she did not take her cell phone with her when she helped her son in the bathroom. While it is understandable that the claimant wanted to and may have needed to help her son, she could have taken her cell phone with her so she would be available for the hearing, but did not. Even though the claimant had the time and date of the hearing on her calendar, she forgot she was to be called at 9:00 a.m. and was not prepared to answer her phone when she was called for the hearing. The claimant did not establish good cause to reopen the hearing. Her request to reopen the hearing again 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 facts establish the employer discharged the claimant on January 19, 2011.

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. 871 IAC 24.32(7).

Since the employer gave the claimant a final written warning for on-going attendance issues on December 21, the claimant's failure to call or report to work without any explanation shows an

intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. As of April 24, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is qualified to receive a waiver of any overpayment of benefits will be remanded to the Claims Section to determine.

DECISION:

The claimant's request to again reopen the hearing is denied. The representative's June 1, 2011 determination (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 24, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css