

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID A HARRIS**  
Claimant

**APPEAL NO. 13A-UI-08212-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**OC: 06/16/13**  
**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment, Employer Participation at Fact Finding

**STATEMENT OF THE CASE:**

Stream International (employer) appealed a representative's July 5, 2013 decision (reference 01) that concluded David Harris (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 19, 2013. The claimant participated personally. The employer participated by Sharon Robertson, Senior Human Resource Generalist, and Brent Jepsen, Team Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 7, 2011, as a full-time customer support professional. The claimant signed for receipt of the employer's handbook on January 7, 2011. The claimant had attendance issues. From April 1, 2013, to the time of his separation, he was absent one time for medical problem and properly reported that absence. He was tardy for work or left early due to transportation issues nineteen times. The claimant did not report to work or notify the employer of his absence six times in this period. He took seven days for a personal absence and six voluntary days of time off. The employer issued the claimant warnings for attendance issues on December 3, 2012, February 4, 25, March 4, and 24, 2013. The employer notified the claimant that further infractions could result in termination from employment. On June 6, 2013, the claimant was supposed to appear for his shift at 12:30 p.m. At 3:30 p.m. the claimant notified the employer he was on his way. The employer terminated the claimant.

Neither the employer nor the employer's representative participated at the fact-finding interview.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

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 matter of deciding the amount of the overpayment and 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 Agency.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination. The employer's account is chargeable because it did not participate in the fact-finding interview.

**DECISION:**

The representative's July 5, 2013 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible. The issue of the overpayment is remanded for determination. The employer's account is chargeable because it did not participate in the fact-finding interview.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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