

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH CARMODY
Claimant

APPEAL NO. 09A-UI-16171-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

**Original Claim: 08-23-09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 13, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 2, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time support professional for Stream International from September 22, 2008 to July 27, 2009. The claimant was on a medical leave of absence from approximately the week of July 5, 2009, until July 26, 2009. Prior to taking the medical leave, the claimant met with his supervisor and a human resources representative and asked if he would be working the same schedule when he returned and was told he would. The claimant's days off were Sunday, Monday, and Tuesday. His return to work date fell on a Sunday so the claimant believed he was not expected to go back to work until Wednesday, July 29, 2009. On July 27, 2009, the human resources representative called the claimant and stated his employment was terminated and hung up. The claimant did not have any previous no-call, no-shows. He has a chronic illness, but it is under control and he is able and available for work at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason and he is able and available for work.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant asked the employer if he would have the same schedule when he came back from the medical leave of absence and was told he would. The claimant was scheduled to return from his medical leave Sunday, July 26, 2009, which was the first day of his three days off on his schedule prior to taking medical leave. Consequently, he did not go to work that day because he reasonably assumed he was not scheduled to work on his usual day off. The employer did not participate in the hearing and offer any contrary evidence. Under these circumstances, the administrative law judge must conclude there has been no demonstration of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 13, 2009, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw