

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

KYLE N STOOS

Claimant,

and

STREAM INTERNATIONAL INC

Employer.

:
:
:
:
:
:
:
:

HEARING NUMBER: 14B-UI-10462

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Employment Appeal Board would adopt and incorporate as its own the administrative law judge's Findings of Fact with the following modifications:

The Claimant, Kyle N. Stoos, was hired as a full-time customer support professional on November 18, 2013. (25:09-25:22) At the start of his employment, the Claimant signed in acknowledgement of receipt the Customer Account Access agreement (CAA). (25:46; 25:58; Exhibit 2) The Employer's CAA policies and procedures were also reiterated on June 17, 2014, which the Claimant signed, again, in acknowledgement of receipt that same day. (35:17-35:22; 36:11-37:00; 37:10-37:45) Part of that policy stipulates that 3 CAA infractions could result in termination. (35:27-35:32, Exhibit 5)

Mr. Stoos failed to follow proper protocol on July 13th, 2014 when he provided a service to a customer and failed to give that customer an opportunity to take a survey on his services. (30:38-31:38) This led to a CAA investigation and a written warning. (Exhibit 5) On July 18th, 2014, the Claimant again did not follow proper CAA protocol when he accessed his own personal account and made changes that resulted in his redeeming tokens belonging to a customer valued at \$204.94. (28:51-29:08; 37:32-37:52; 2nd recording @ 1:38-2:1:46) This was the Claimant 3rd CAA infraction. The Employer considered this a blatant violation and terminated him.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 NW2d 661 (Iowa 2000).

The Claimant is a short-term employee who had knowledge of the Employer's policy as it related to the CAA agreement. This was evidenced by his signature from the beginning of his employment, and reiterated just before he was terminated. (Exhibit 1-unnumbered p.3, Exhibit 2) According to the Employer's testimony, which we find credible, Mr. Stoos failed to follow CAA protocol for the 3rd time on July 18th by accessing his personal account and redeeming tokens that didn't belong to him. The Employer rightfully found this an egregious offense, particularly in light of the Claimant's 2 prior CAA violation warnings (March 8, 2014 & July 13, 2014). (Exhibits 2 & 5) Although this 3rd incident was different than the previous 2, all of these infractions come under the purview of the CAA agreement, which provides for termination upon a 3rd offense. Additionally, we agree with the Employer that the Claimant's 3rd CAA infraction was indicative of a pattern of behavior. The Claimant failed to participate in the hearing to refute any of the Employer's testimony. Based on this record, we conclude that the Claimant's behavior can justifiably be characterized as a blatant disregard of the Employer's interests for which the Employer has satisfied its burden of proof.

DECISION:

The administrative law judge's decision dated November 10, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying reasons. Accordingly, the Claimant is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv