

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEROY T SCHONROCK
Claimant

APPEAL NO. 10A-UI-15258-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 10/03/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 26, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on December 16, 2010. Claimant participated. Employer participated through Human Resource Generalist Stacy Albert and Immediate Supervisor Laura Karmann. Employer's Exhibit 1 (fax pages 4 through 18) was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a customer support professional and was separated from employment on August 23, 2010. On Saturday, August 21 he was tardy reporting at 7:06 a.m. for his 7:00 a.m. shift because he was ill. He also had to leave after clocking in on the computer because he had diarrhea resulting from nerve damage related to back surgery the prior year. Because he could not immediately locate Karmann he notified a coworker he was going home to shower and change clothes. The coworker did not pass along the message to Karmann until she had been looking for him for awhile. When Karmann called him he had just gotten out of the shower and intended to return to work but she told him he was suspended for three days and to report on August 23, 2010 when he was fired. On Monday, August 23 he was not scheduled to work but was ill and had been admitted to the hospital with pneumonia the day before. He always reported the reasons for his absences. The absences were all related to medical issues related his back surgery. He had previously given the employer a medical excuse allowing him to clock out for bathroom breaks.

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.

Iowa Code § 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 employer has the burden of proof in establishing disqualifying job misconduct and absences due to properly reported illness or injury, even if excessive, cannot constitute job misconduct since they are not volitional and are excused. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system or no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Given the emergent nature of claimant's medically-related condition, it was reasonable for him not to wait to locate Karmann but tell a coworker that he was leaving. Because the final absence for which he was discharged was related to reasonably reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

DECISION:

The October 26, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css