

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA L MURPHY-WINN
Claimant

APPEAL NO. 13A-UI-08372-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 06/23/13
Claimant: Respondent (2-R)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer, Stream International, filed an appeal from a decision dated July 11, 2013, reference 01. The decision allowed benefits to the claimant, Debra Murphy-Winn. After due notice was issued a hearing was held by telephone conference call on August 21, 2013. The claimant participated on her own behalf. The employer participated by Manager Scott Putney and Human Resources Generalist Bangone Chanthavong.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Debra Murphy-Winn was employed by Stream from November 20, 2006 until June 14, 2013 as a full-time customer service representative. She attended the new hire orientation and acknowledged it was her responsibility to access and read the electronic employee handbook. The employer's cell phone policy was separately acknowledged April 2, 2012. The employer has a zero tolerance policy for cell phones and other recording devices on the calling floor because the company handles sensitive information such as customers' credit card numbers, home address and telephone numbers and other material which must be kept confidential.

Manager Scott Putney and Human Resources Generalist Bangone Chanthavong had received many reports and hearsay from other employees that Ms. Murphy-Winn would frequently have her cell phone on the call floor and would be using it after supervisors and managers had gone home for the day. They spoke with her more than once, specifying they did not have anything but rumors, but reminding her there was a zero tolerance policy regarding cell phones.

On June 11, 2013, Mr. Putney was listening to a recording of a call the claimant had taken the day before. During that call she said to the customer that her cell phone was ringing and she should not be having her phone with her. Because of the prior counselings and the zero tolerable policy, the claimant was discharged that day by Mr. Putney and Ms. Chanthavong.

Debra Murphy-Winn has received unemployment benefits since filing a claim with an effective date of June 23, 2013.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised her job was in jeopardy if it were ever confirmed she had violated the cell phone policy. Ms. Murphy-Winn maintained her grandson had put his phone in her purse without her knowledge because she was somehow expected to have it fixed for him. The administrative law judge does not find this explanation to be credible. The claimant adamantly denied many things in her testimony, such as ever receiving the employee handbook or the cell phone policy. It was confirmed by her own signature she had in fact received them.

She appears to be alleging there was a conspiracy by her co-workers to falsely report her use of a cell phone on the calling floor and the verbal counselings by Mr. Putney and Ms. Chanthavong. But she could provide no explanation at all as to why so many varied individuals, management and co-workers, would agree to conspire against her.

The claimant's testimony cannot be accepted as credible. She was discharged for violation of a serious and known company policy designed to protect the assets of the clients and customers and the employer's business relationship with the clients. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

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.

DECISION:

The representative's decision of July 11, 2013, reference 01, is reversed. Debra Murphy-Winn is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

The matter of deciding the amount of the overpayment and whether the amount overpayment should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs