

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHAU M PETERSON

Claimant

APPEAL NO. 14O-UI-05778-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

OC: 01/19/14

Claimant: Appellant (1-R)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism/Tardiness
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated February 18, 2014, reference 02, that held he was discharged for excessive unexcused absenteeism on January 17, 2014, and benefits are denied. A hearing was held on April 8, 2014, and an Administrative Law Judge (ALJ) issued an April 8, 2014 decision that reversed and allowed claimant benefits. The employer appealed.

The Employment Appeal Board (EAB) issued a June 5, 2014 order for a new hearing. A telephone hearing was scheduled for June 26, 2014. The claimant did not participate. Bangone Chanthavong, HR Generalist, and Donnette Twin, Trainer, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on March 17, 2003 and last worked as a full-time customer service agent on January 17, 2014. The claimant received the employer attendance policy that provides for points based on violations. The employer issues warnings at 5, 6 and 7 points as 8 points results in termination.

The employer issued claimant verbal and written warnings when he accumulated 5 or more points. Claimant signed for a January 5, 2014 written warning that he was at 6.5 points with language he could be terminated based on future points.

Claimant was at 7.5 points for failing to report for January 4 training and before a final warning could be issued, he was a no-call/no-show for training on January 17, 2014 that put him at 8.5 points. The employer terminated claimant for violation of attendance.

Claimant failed to respond to the hearing notice. There is no C2T control system record claimant called in to UI Appeals to provide a phone number to be called for the hearing.

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.

Iowa Admin. Code r. 871-24.32(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 administrative law judge concludes employer established misconduct in the discharge of the claimant on January 17, 2014, for excessive "unexcused" absenteeism.

While the employer considered claimant a voluntary quit for a no-call/no-show to training on January 17, it is apparent the employment termination is based on claimant's attendance policy points/violations that is a discharge. Since claimant did not participate in this matter to refute the employer testimony and documentation, job disqualifying misconduct is established. The employer shows claimant exceeded the 8-point threshold for termination that is excessive unexcused absenteeism.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. . . .

The administrative law judge further concludes the issue of overpayment is remanded to Claims for decision. This issue was not included on the UI Appeals hearing notice.

DECISION:

The decision of the representative dated February 18, 2014, reference 02, is affirmed and the ALJ April 8, 2014 decision in Appeal 14A-UI-02208-H2T is vacated and set aside. The claimant was discharged for misconduct in connection with employment on January 17, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css