

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA J HELMHOLD
Claimant

APPEAL NO. 12A-UI-08600-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 06/17/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Stream International filed a timely appeal from a representative's decision dated July 11, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 13, 2012. Claimant participated. The employer participated by Ms. Sharon Robertson, Human Resource Generalist. Employer's Exhibits One through Nine were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Kayla Helmhold was employed by Stream International from September 12, 2011 until June 21, 2012 when she was discharged from employment. Ms. Helmhold worked as a full-time customer service representative taking inbound telemarketing calls. The claimant was paid by the hour. Her immediate supervisor was Judy Easton.

Ms. Helmhold was discharged from Stream International based upon the employer's belief that Ms. Helmhold had failed to follow company policy by cancelling client radio service to two customers without the authorization of the customer via inbound telephone calls. It was the employer's belief that Ms. Helmhold had cancelled these services to make it appear that she was handling more inbound calls than she was actually receiving, thus improving her account statistics and her potential for company bonuses. It was the employer's belief that the claimant made adjustments to customer accounts without authorization. The company records did not reflect that there was an incoming call or calls to allow the claimant to make any adjustments to the customer accounts.

The program that Ms. Helmhold was assigned to was for a client who provided satellite radio service at no charge on a demonstration basis. The claimant's duty was to field calls from individuals using the demo radios and to make adjustments on the service or to convert the caller to a pay-for-service plan. Ms. Helmhold denied the employer's allegations at the time of

termination and believed that she was following company protocol by cancelling services when the patrons had called requesting additional services that they were unauthorized to receive.

It is the claimant's position that she often received calls from individuals who had received information in the mail that their free service was about to be cancelled and that the individuals often called the claimant upset about the cancellation. It is the claimant's further position that she did receive calls from the individuals in question and cancelled services based upon her belief that they were no longer authorized to receive free demonstration services and the callers had elected not to pay for the services. Ms. Helmhold discontinued the demonstration service to the individuals in question because she believed that they were receiving the continued services in error and therefore discontinued them in her belief that she was following the employer's/clients' expectations.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee is not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable

acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the employer made a management decision to terminate Ms. Helmhold based upon a complaint from a caller who alleged that free satellite renewed service had been discontinued without the caller making a telephone request for Ms. Helmhold to do so. The employer's witness, a representative of the human resource department, testified that it was her belief and the company's belief that Ms. Helmhold engaged in effect, in a scheme to enhance her account statistics by cancelling or otherwise manipulating the accounts of individuals who had not called Stream International for the purpose. The employer's witness further testified that it was her belief that the calls were not documented or reflected in company records. In contrast, Ms. Helmhold participated personally and testified under oath with specificity that the pre-demonstration radio had been cancelled after she had received calls from individuals that she had determined that the individuals were not authorized to continue to receive the free demonstration service. Ms. Helmhold further testified that she had followed the same procedure in the past and had not been warned or counseled or told that her procedure was unacceptable. While hearsay evidence is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. The administrative law judge finds Ms. Helmhold to be credible and finds that her testimony is not inherently improbable. The administrative law judge thus finds the weight of evidence to be in support of the claimant.

The question before the administrative law judge in this case is not whether Stream International has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provision of the Iowa Employment Security Law. While the decision to terminate Ms. Helmhold may have been a sound decision from a management viewpoint, however, for the above-stated reasons the administrative law judge concludes that the evidence is not sufficient to establish intentional disqualifying misconduct. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 11, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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