

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY A MOREY
Claimant

APPEAL NO. 07A-UI-10681-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

**OC: 10/07/07 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a –Discharge

STATEMENT OF THE CASE:

The employer, Stream International, filed an appeal from a decision dated November 9, 2007, reference 01. The decision allowed benefits to the claimant, Ricky Morey. After due notice was issued, a hearing was held by telephone conference call on December 4, 2007. The claimant participated on his own behalf. The employer participated by Human Resources Recruiter Jacqueline Kurtz and Human Resources Manager Debbie Nelson.

ISSUE:

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

FINDINGS OF FACT:

Ricky Morey was employed by Stream International from September 24 until October 10, 2007, as a full-time technical support representative. He was absent four days in two weeks. His wife was ill one day and he had to stay home and take care of the children, and one day he left early due to personal illness. On October 9 and 10, 2007, one of his children was ill and the daycare center would not take it, and his wife was a “new mother” and could not deal with taking care of a newborn and a three-year old, so the claimant stayed home to baby-sit. When he returned to work, he was discharged for excessive absenteeism.

Ricky Morey has received unemployment benefits since filing a claim with an effective date of October 7, 2007.

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.

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 claimant had an absentee rate of approximately 33 percent. Only one absence was due to personal illness, the other absences were so he could stay home and take care of his children, even though his spouse was home. This constitutes absenteeism due to lack of child care. Matters of purely personal consideration, such as lack of child care, are not considered an excused absence. Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984). Under the provisions of the above Administrative Code section, excessive unexcused absenteeism is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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 section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 9, 2007, reference 01, is reversed. Ricky Morey is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,160.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw