

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTY K SLOAN
Claimant

APPEAL NO. 09A-UI-05501-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 03/01/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Kristy Sloan filed an appeal from the decision of March 26, 2009, reference 01. The decision disqualified her from receiving unemployment insurance benefits. Due notice for the hearing was issued and a hearing was held on May 12, 2009 in Sioux City, Iowa. The claimant participated on her own behalf. Stream International participated by Human Resources Generalist Staci Albert and Team Manager James Hanson.

ISSUE:

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

FINDINGS OF FACT:

Kristy Sloan was employed by Stream International from July 24, 2007 until February 28, 2009 as a full-time customer support professional. Ms. Sloan was absent beginning January 11, 2009 and had requested a leave of absence. The employer provided documentation for her to have her doctor fill out in order that she could be granted FMLA. The doctor's documentation was not detailed enough and Ms. Sloan was sent a letter by the corporate office on February 2, 2009 saying additional information needed to be provided no later than February 13, 2009.

The claimant provided a doctor's note on February 13 saying she would return to work on February 14, 2009 without restrictions. She worked only one full day and then called in absent from work due to illness after that time. The absenteeism was due to stress from certain changes in the type of accounts she was handling at work, moving her residence, and some medical problems which were preexisting at the time she went to work for Stream International.

The employer continued to try and contact her for additional information about her medical condition and only one doctor's note was provided on February 26 saying that she would not be able to return to work until March 15, 2009. When the claimant did not return to work, the employer invoked its attendance policy which had granted one point for every absence since

February 15, 2009. She had accumulated eight points and under the attendance policy this was grounds for discharge.

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 obviously did not understand well what the employer required as far as medical documentation. Neither she nor her doctor provided any statements except the one returning her to work without restrictions on February 14, 2009. The claimant had confused FMLA with short-term disability which she did not want. In any event the documentation was not forthcoming and she was discharged for the absences she called in after February 14, 2009. The employer acknowledged each of the absences was properly reported. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). There was no current final act of misconduct which precipitated the discharge as

required by 871 IAC 24.8. Without a current final act of misconduct no disqualification may be imposed.

DECISION:

The representative's decision of March 26, 2009, reference 01, is reversed. Kristy Sloan is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs