

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD M ANGERMAN
Claimant

APPEAL NO. 13A-UI-08506-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 06/23/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Claimant filed an appeal from an unemployment insurance decision dated July 18, 2013, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was scheduled for August 27, 2013. The claimant did not participate in the hearing. Participating for the employer were Ms. Bangone Chanthavong and Scott Putney. Exhibits A, C, D, and E were received into evidence.

ISSUE:

The issue is whether the representative's decision finding the claimant was discharged under disqualifying conditions should be affirmed.

FINDINGS OF FACT:

The parties were properly notified of the scheduled hearing on this appeal. The appellant failed to provide a telephone number where she could be reached for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

Chad Angerman was employed by Stream International, Inc. as a customer service professional from February 22, 2010 until his discharge on June 26, 2013. The claimant was employed full time and was paid by the hour. His immediate supervisor was Scott Putney.

The claimant was discharged after an investigation concluded that Mr. Angerman had violated the company's zero tolerance on harassment in the workplace policy by threatening and directing inappropriate language to a female worker on June 25, 2013. The event was witnessed by the claimant's supervisor and another hourly employee. Mr. Angerman was aware of the company rule and was aware that violation of it could result in immediate termination from employment.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

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 administrative law judge has carefully reviewed the evidence in the record and concludes that the unemployment insurance decision previously entered in this case is correct and should be affirmed. The claimant was discharged for violation of a known company policy when he made a threatening statement and directed inappropriate language to a female worker on June 25, 2013. The employer investigated the allegation and determined that Mr. Angerman's conduct was in violation of the company's zero tolerance against harassment rules and the claimant was discharged. The administrative law judge concludes that the discharge took place under disqualifying conditions.

DECISION:

The unemployment insurance decision dated July 18, 2013, reference 01, is affirmed. The representative's decision remains in effect. Benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs