

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK J SMITH
Claimant

APPEAL NO. 08A-UI-01608-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 01/20/08 R: 01
Claimant: Respondent (2)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Stream International, Inc. filed an appeal from a representative's decision dated February 7, 2008, reference 01, which held that no disqualification would be imposed regarding Patrick Smith's separation from employment. After due notice was issued, a hearing was held by telephone on March 21, 2008. The employer participated by Jacqueline Kurtz, Human Resources Recruiter. Exhibits One through Nine were admitted on the employer's behalf. Mr. Smith responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

ISSUE:

At issue in this matter is whether Mr. Smith was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Smith was employed by Stream International, Inc. from November 6, 2006 until December 31, 2007. He worked full time as a customer service representative. He was discharged because of his attendance. He received written warnings about his attendance on February 2, March 19, July 18, August 8, September 13, and November 18, 2007.

The absences that caused Mr. Smith's discharge are contained on Employer's Exhibit One. Some of his absences before December 30 were due to illness and some were for unknown reasons. There was no evidence that he ever left work early without permission prior to December 30. Mr. Smith called on December 30 to report that he would be absent because he was out of town. He reported to work on December 31 but walked off the job before the end of his shift. As a result, he was discharged effective December 31, 2007.

Mr. Smith filed a claim for job insurance benefits effective January 20, 2008. He has received a total of \$1,065.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from receiving benefits if he was excessively absent on an unexcused basis. Properly reported absences that are for reasonable cause are considered excused absences.

None of Mr. Smith's absences prior to December 30, 2007 have been established as unexcused. Those caused by illness are excused as illness is reasonable grounds for missing work. Those occasions on which he left early prior to December 30 are also excused as he had the employer's permission to leave. With respect to those absences for which no reason is identified, the administrative law judge cannot conclude they are unexcused. Since the employer had the burden of proving misconduct, any doubt as to whether the absences were for reasonable cause will be resolved in Mr. Smith's favor.

Mr. Smith's absence of December 30 is presumed to be for personal reasons as he was out of town. His absence of December 31 is unexcused as he walked off the job without permission. The administrative law judge concludes that these two unexcused absences are sufficient to establish disqualifying misconduct, especially in light of the fact that one incident involved walking off the job. Mr. Smith had been amply warned that his attendance was jeopardizing his continued employment. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect. For the reasons cited herein, benefits are denied.

Mr. Smith has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated February 7, 2008, reference 01, is hereby reversed. Mr. Smith was discharged for disqualifying misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Smith has been overpaid \$1,065.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css