

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI NILES

Claimant

APPEAL NO. 08A-UI-01609-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

**OC: 01-20-08 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 8, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 3, 2008. The claimant participated in the hearing. Melissa Kemp, Team Manager, and Jacqueline Kurtz, Human Resources Recruiter, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for Stream International from October 2, 2006 to January 18, 2008. She was discharged from employment due to a final incident of absenteeism that occurred on January 15, 2008. On January 4, 2007, the claimant was absent from work due to family issues; on January 16, 2007, she was late due to family issues; on April 9, 2007, she was absent from work due to car problems; on May 14, 2007, she was one hour and ten minutes late because her alarm did not go off; on May 29, 2007, she left 27 minutes early due to childcare issues; on June 4, 2007, she was absent from work due to car problems; on June 22, 2007, she was one hour late; on September 6, 2007, she was absent from work due to family issues; on November 16, 2007, she was absent from work due to family issues; on December 11, 2007, she was absent from work due to family issues; on December 13, 2007, she left work 55 minutes early; on January 1, 2008, she left work four hours early due to family issues and on January 2, 2008, she left work five hours early due to family issues. (Employer's Exhibit One). On June 5, 2007, the claimant received a written warning for attendance and a verbal warning for tardiness; on September 9, 2007, she received a written warning for attendance and a verbal warning for tardiness; on November 20, 2007, she received a written warning for attendance and a verbal warning for tardiness; on December 13,

2007, she was placed on a full-day final written warning for attendance and it stated any future full-day occurrences could result in termination; on January 4, 2008, she was placed on a partial-day (tardiness) final written warning and it stated any future partial-day occurrences could result in termination (Employer's Exhibit One). On January 15, 2008, she was 51 minutes late because of car problems and her employment was terminated. The claimant was aware her job was in jeopardy. There is no evidence her absences were related to illness.

The claimant has claimed and received unemployment insurance benefits since separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant was absent six times and tardy or left early eight times between January 4, 2007, and January 15, 2008, despite several warnings about her attendance. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Consequently, benefits must be denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The February 8, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$524.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw