IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KRISTIN J KLUG
Claimant

STREAM INTERNATIONAL INC
Employer

APPEAL NO. 12A-UI-07167-W

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/06/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a fact-finding decision dated June 6, 2012, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on September 26, 2012, at the Sioux City IowaWORKS office. Claimant participated personally. Employer participated by H.R. Generalist, Bangone Chanthovong. H.R. Manager, Debbie Nelson was also present. Exhibits A through G were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant was employed by Stream International as a full-time customer support professional. She began employment on November 26, 2007. She was discharged on May 7, 2012 by employer following a review of one her calls by her manager. On May 7, 2012, the claimant was dealing with a difficult customer who was cancelling a service for her boss. The conversation was frustrating for both the claimant and the customer. The claimant attempted to place the customer on hold but hit the wrong button. While she thought the customer was on hold, she called the customer a “witch.” When she realized the customer was not on hold, she immediately apologized and attempted to place the customer on hold again, although the customer apparently hung up. The claimant reported this incident and was terminated a few hours later.

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(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

> (4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. The claimant believed the customer was on hold and talked to herself. She testified credibly that she sometimes did this to relieve stress. The claimant made a good faith but isolated error. Her actions amounted to ordinary negligence in failing to hit the correct button to place the call on hold. Had she hit the correct button, her actions clearly did not amount to misconduct. In all likelihood, she would not have been terminated. Her error was in negligently hitting the incorrect button on the phone. It is further specifically found that the claimant did not hang up on the customer. After she realized the mistake, she apologized and placed the customer on hold. The customer apparently hung up.

There is certainly nothing in this decision, however, which questions the employer's judgment to terminate the claimant. The claimant committed an act of negligence and the employer was within its legal right to terminate her. This action, however, simply did not rise to the level of misconduct as it is defined by Iowa law.

DECISION:

The fact-finding decision dated June 6, 2012, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Joseph L. Walsh
Administrative Law Judge

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Decision Dated and Mailed

jlw/pjs