

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELINDA S STOCKTON**  
Claimant

**APPEAL NO. 10A-UI-04814-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**Original Claim: 02/7/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 16, 2010, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 12, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Monica Ensminger participated in the hearing on behalf of the employer with a witness, Al Kirts. Exhibits One through Three were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a service professional on a technical support line from November 17, 2008, to February 8, 2010. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. Under the employer's attendance policy, employees receive points for unscheduled absence and tardiness and are subject to termination if they receive eight attendance points in 180 days.

The claimant received a verbal warning on January 24, 2010, because she had five points. On February 1, she received a written warning because she had six points. On February 4, she received a final written warning because she had seven points. She understood that she was subject to termination at eight points. The claimant's points were primarily due to illness and weather-problems with this year's harsh winter. She properly reported her absences. She lives about an hour from work.

On February 7 the claimant was unable to report to work due to winter weather and road conditions. Roads were closed and travel was not advised in her area. She called in and reported that she was unable to report to work. On February 8, she was not able to report to work in the morning due to winter weather and road conditions. She called and said she would be late but would be in when she was able. She reported to work about 4.5 hours late, and the employer discharged her for exceeding the point limit.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

871 IAC 24.32(7) provides:

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.

While the employer may have been justified in discharging the claimant under its attendance policy, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant's final attendance incidents were based on reasonable grounds and were properly reported.

## DECISION:

The unemployment insurance decision dated March 16, 2010, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw