

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOE A MARES
Claimant

APPEAL NO. 13A-UI-05448-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04/14/13
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Stream International, filed an appeal from a decision dated May 6, 2013, reference 01. The decision allowed benefits to the claimant, Joe Mares. After due notice was issued, a hearing was held by telephone conference call on June 14, 2013. The claimant participated on his own behalf. The employer participated by Human Resources Generalist Bangone Chanthavong and Team Manager Brian Carl. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Joe Mares was employed by Stream from August 13, 2008 until March 22, 2013 as a full-time customer support professional. On April 3, 2012, he signed an updated cell phone policy. The policy forbids cell phones or any recordable devices on the production floor. This is an absolute prohibition. Employees are not even allowed to have a phone in their pocket. The purpose for this is that the company handles sensitive information of many types for their customers and their clients. This factor was explained to Mr. Mares and all other employees so they would know the importance of not having these devices on their person at any time while on the production floor. The phones are to be left in a locker or in their vehicle in the parking lot. Employees may use the phones in designated areas such as the break room on their own time.

On March 22, 2013, Team Manager Brian Carl found the claimant sitting at one of the manager's desks with his cell phone open, turned on and sitting on the desk while he input numbers manually on the screen. He was discharged immediately. Discharge is universally imposed for any violation of this policy.

Joe Mares has received unemployment benefits since filing a claim with an effective date of April 14, 2013.

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.

The employer made it very clear to all employees that no cell phones or similar devices are allowed on the production floor. It was also made clear why this prohibition was so essential. The claimant was aware of the policy but chose to violate it rather than waiting until break or asking a manager if he could leave the production floor.

In order to be disqualified from unemployment benefits for a single incidence of misconduct, the misconduct must be a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. *Henry v. IDJS*, 391 N.W.2d 731 (Iowa App. 1986).

The administrative law judge considers the claimant's willful violation of this important policy to rise to the level of substantial, job-related misconduct sufficient to warrant a denial of unemployment benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of May 6, 2013, reference 01, is reversed. Joe Mares is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css