

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE D DOUGLAS

Claimant

APPEAL NO. 08A-UI-04840-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC

Employer

**OC: 04/20/08 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Danielle D. Douglas (claimant) appealed a representative's a representative's May 13, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Stream International, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2008. The claimant participated in the hearing. Jacqueline Kurtz and Matt Handke, the supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 29, 2007. The claimant worked as a full-time customer service representative. At the time of hire, the claimant received information about the employer's no-fault attendance policy. This means that any unauthorized absence counts as an occurrence. The attendance policy also informs employees that if they accumulate seven occurrences for missing partial days of work in a year, the employer will discharge the employee.

On February 20, 2008, the claimant received her final written warning for ongoing attendance issues. The claimant had accumulated six occurrences for either reporting to work late or leaving work early. The warning informed the claimant that if she had another occurrence, the employer would discharge her.

On April 1, the claimant notified the employer she would be late for work because of adverse weather conditions. The employer did not discharge the claimant for reporting to work late on April 1. On April 20, the claimant's home experienced a power outage. The power outage was widespread. As a result of the power outage, her alarm did not go off. The claimant's mother woke her up and she sped to work. As a result of speeding, the claimant was stopped by a law enforcement official. The claimant notified the employer that she was on her way to work, but would be late. The claimant was 17 minutes late for work on April 22, 2008. Since this was the claimant's eighth attendance occurrence, the employer discharged her.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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(8).

The employer established business reasons for discharging the claimant. Based on the employer's attendance policy, the claimant violated the employer's no-fault attendance policy. The evidence does not, however, establish that the claimant intentionally failed to work as scheduled. The claimant had no control or advance knowledge there would be a power outage the morning of April 22, 2008. Since the claimant knew her job was in jeopardy, she drove faster than the speed limit in an attempt to get to work on time and was pulled over. Speeding amounts to poor judgment. The claimant properly notified the employer that she would be late. The evidence establishes that on April 22, the claimant did not commit a current act of work-connected misconduct. Therefore, she is qualified to receive benefits.

DECISION:

The representative's May 13, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of April 20, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw