

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS G HAYES
Claimant

APPEAL NO. 08A-UI-02742-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 10/07/08 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Stream International Inc. (employer) appealed a representative's March 10, 2008 decision (reference 02) that concluded Thomas G. Hayes (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 3, 2008. The claimant participated in the hearing. Christine Ristau was available to testify, but did not. Jacqueline Kurtz, a human resource recruiter, and Chris Clausen, a human resource generalist, 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.

After the hearing was closed, the claimant faxed documents. Since the hearing had not been left open for documents that had not been submitted before the hearing, a copy of the documents were forwarded to the employer. The administrative law judge has not considered these documents when making this decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on November 27, 2007. The claimant worked full time in technical support. The claimant was in training until early or mid-January. Misty Hanna supervised the claimant.

The employer allows employees two 15-minute breaks and a 30-minute lunch break during a shift. The employer also allows employees an additional eight minutes of personal time during a shift. During the claimant's employment, the employer noticed the claimant took more than eight minutes of personal time during his shift. The employer talked to the claimant about how much personal time he took on December 21. The claimant told Hanna he used personal time

because he had a medical condition that required him to frequently use the restroom. Hanna made suggestions on ways the claimant could reduce the personal time he took.

After the claimant used 20 minutes of personal time on February 1 and 19 minutes of personal time on February 5, Hanna gave the claimant a written warning for using too much personal time. The claimant signed the written warning on February 5. The claimant did not read the February 5 written warning.

On February 7, the claimant used 22 minutes of personal time. Hanna again talked to him about the amount of personal time he was taking. Even though Hanna talked to the claimant and gave him a written warning, he had no idea his job was in jeopardy. The claimant believed Hanna understood he could not control his medical condition. The claimant asserted he also used personal time to talk to the employer's accountant. On February 13, the claimant used 31 minutes of personal time.

On February 14, the employer informed the claimant he was discharged because he repeatedly used too much personal time during his shift. The employer also discharged the claimant after concluding the claimant hung up on a customer during his February 13 shift. The claimant denied this occurred and does not remember the employer telling him this was a reason for his discharge.

The employer's policy informs employees that the employer considers an employee to have committed gross misconduct if an employee hangs up on a customer. The employer may immediately discharge an employee for committing gross misconduct.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The claimant told Hanna and he believed she understood that he had no control over the amount of personal time he used because of his medical condition. Since Hanna did not testify at the hearing, the facts do not dispute the claimant's assertion that the employer knew he had a medical condition the employer should accommodate. Since the claimant did not believe his job was in jeopardy, he did not read the written warning Hanna gave him on February 5. Although the claimant asserted he gave Hanna a doctor's statement verifying the claimant's need to use

the restroom frequently, the employer did not have a copy of this statement. While the claimant may have a medical condition, he did not ask the employer for any accommodations he needed for medical reasons. The claimant's failure to request accommodations because of a medical condition amounts to poor judgment and not work-connected misconduct. Based on the evidence presented during the hearing, the claimant took more personal time than the employer allowed. Therefore, the employer established compelling business reasons for discharging the claimant. When the claimant took more than eight minutes for a personal time during a shift, he did not do so intentionally. He established a reasonable explanation and medical excuse for taking more personal time than the employer allotted.

The employer asserted the claimant also disconnected a customer during his February 13 shift. Since the person who reviewed this call did not testify, the claimant's testimony that he did not do this and his explanation as to what another employee heard while monitoring the call is reasonable. Even if the claimant disconnected a customer, this isolated incident does not rise to the level of work-connected misconduct.

Under the facts of this case, the claimant did not commit work-connected misconduct. As of February 17, 2008, the claimant is qualified to receive benefits. The employer is not one for the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's March 10, 2008 decision (reference 02) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of February 17, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css