

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE M CUELLAR
Claimant

APPEAL NO. 10A-UI-14378-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 09/05/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 8, 2010, reference 01, that concluded she was unable to work. A telephone hearing was held on December 2, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for the employer as a telephone service representative from December 30, 2009, to April 8, 2010. Her doctor recommended she go on bed rest due to complication with her pregnancy until her baby was born. The claimant submitted a doctor's excuse to the employer and requested a leave of absence, but she was discharged because she was not able to work.

The claimant delivered her child on May 10, 2010, and was released to work without restrictions by her doctor near the end of June 2010. She applied for employment effective September 5, 2010, and did not have any restrictions on her ability to work at that time.

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 section 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 claimant was discharged for being unable to work. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. When the claimant applied for benefits, she was able to work without restrictions.

DECISION:

The unemployment insurance decision dated October 8, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css