

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL A PRASTER SR
Claimant

APPEAL NO. 08A-UI-04821-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04-20-08 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 14, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 3, 2008. The claimant did not participate. The employer did participate through (representative) Jacqueline Kurtz, Human Resources Recruiter and Rachel Twinn, Team Manager.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a customer service representative full time beginning October 29, 2007 through March 26, 2008 when he was discharged.

The claimant was absent on March 26, 2008 because he had to take his son to the hospital. The claimant participated in the fact-finding interview where he indicated he had to take his ill son to the hospital. The claimant had no other family member or friend who was able to care for the sick child, nor was the child's mother available to provide care.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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(7) provides:

(7) 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Absences related to lack of childcare are generally held to be unexcused. Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984). However, a good faith inability to obtain childcare for a sick infant may be excused. McCourtney v. Imprimis Technology, Inc., 465 N.W.2d 721 (Minn. App. 1991).

Because the final absence was related to the properly reported illness of a small child, for which no childcare was available, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. A parent can not refuse to provide medical care for a sick child. The circumstances place the parent of an ill child in an untenable position, either neglect medical care for the child and report to work; or report to work and neglect to provide medical care for the child. An absence to provide medical care for an ill child is not volitional under the meaning of the law and is necessarily excused. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 14, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css