

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE M FANCHER-WILLIAMS
Claimant

APPEAL NO. 10A-UI-09200-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 04/18/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 18, 2010, reference 02, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 12, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Stacy Albert participated in the hearing on behalf of the employer with a witness, Todd Gunderson. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as technical support representative from September 25, 2009, to April 13, 2010. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. Under the rules, an employee was subject to termination if they received eight attendance points, which are issued for unscheduled absences, tardiness, or leaving work early.

The claimant had received multiple warnings regarding her attendance, including warnings on: (1) December 2, 2009 (for unscheduled absences on October 22 and November 27, and 29 and for a no-cal/no-show on November 28); (2) December 29 (for an unscheduled absence on December 27), (3) March 8 (for an unscheduled absence on January 22 and leaving work early on March 7 due to illness), and (4) April 10 (for an unscheduled absence on April 9 due to illness). In the April 10 warning, the claimant was informed that she was at 7.5 points and if she reached 8 points she would be terminated. The claimant does not recall why she missed work on October 22, November 27, 28, and 29, and December 27. She was granted a personal leave of absence from January 23 through February 22, but it did not cover the January 22 absence.

The claimant lives 10 miles from work. After her car was stolen, she was receiving a ride to work from a coworker who lives nearby. On April 16, the claimant was scheduled to work at 11:30 a.m. She called the coworker when he did not arrive to pick her up. The coworker told her that he had decided to quit work and would not be giving her a ride. The claimant had no idea the coworker was quitting. She called family members in the Sioux City area to get a ride, but none of them were available to give her ride. She was unaware of any public transportation to her worksite or any other employee who could give her a ride. She called her supervisor and told him about her situation. Her supervisor reminded her about her warning and said she should try to find a way to work.

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 § 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).

871 IAC 24.32(7) provides: "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." Furthermore, 871 IAC 24.32(8) provides: "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."

The current act of alleged misconduct in this case is her absence on April 16. Her inability to get work was not her fault and she was unaware that she had no ride until the time she needed to leave to go to work. She was prepared to work and made reasonable efforts to find alternative transportation. She had reasonable grounds for her absence. She properly notified the employer about her inability to work. No willful and substantial misconduct has been proven in this case.

The Department records show the claimant was granted department approved training (DAT) starting May 29, 2010. The employer will not be charged for any benefits while she is in DAT under Iowa Code § 96.4-6-a.

DECISION:

The unemployment insurance decision dated June 18, 2010, reference 02, 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