

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REBECCA L WOOD
Claimant

APPEAL NO: 11A-UI-12611-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 08/21/22
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 13, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Staci Albert and Scott Putney appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2010 as a full-time customer support professional. The employer requires employees to punch out when they are on a lunch break.

The claimant received a final warning on May 10, 2011, for failing to punch out when she took her lunch. The May 10 warning informed the claimant that further problems of a similar nature could result in her termination.

On August 22, 2011, the claimant's supervisor was not at work, so Putney was supervising the claimant. He noticed the claimant was away from her desk for more than 40 minutes, which meant she was on her lunch break. Putney noticed that her phone indicated she was at lunch, but she had not punched out on her timecard. When the claimant returned from lunch, she did not punch in. When Putney asked her about punching out for lunch, the claimant reported she had forgotten. The employer then reviewed the claimant's time cards since May 10, 2011. From May 11, 2011, through August 22, the claimant had only punched out four days for lunch.

When the employer again asked why she had not punched out for lunch since her final written warning, the claimant again responded that she had forgotten. Even though employees are supposed to approve their time cards, the claimant did not know how to do this and did not approve her time cards. If an employee forgets to punch out, she can ask a supervisor to correct the time card. The claimant did not forget to punch in at the beginning of her shift or at the end of her shift. As a result of not punching out for lunch, the claimant received wages she was not entitled to receive.

The employer discharged the claimant on August 22, 2011, for repeatedly failing to punch out for lunch and for failing to have her supervisor make timely corrections.

The claimant established a claim for benefits the week of August 21, 2011.

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. 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).

After receiving the final written warning on May 10, the claimant knew or should have known her job was in jeopardy if she did not properly punch out when she was on a break and was not working. After the claimant received the May 10, 2011 written warning, there were only four days she punched out for lunch from May 11 through August 22, 2011. Even if the claimant forgot to punch out, she also failed to timely ask her supervisor to correct her mistake. Instead, the claimant received wages for her lunch breaks when the employer did not pay employees for lunch breaks.

While her supervisor should have noticed the claimant was not punching out for lunch, it was still the claimant's responsibility to punch out for lunch or ask her supervisor to correct her mistake. The evidence indicates the claimant committed work-connected misconduct when she repeatedly failed to punch out for lunch and received wages she was not entitled to receive because she did not ask her supervisor to correct her time card. As of August 21, 2011, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since August 21 will be remanded to the Claims Section to determine.

DECISION:

The representative's September 13, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 21, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw