

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHILOH M ROHDE
Claimant

APPEAL NO: 13A-UI-01877-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 12/30/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 6, 2013 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because her employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Sharon Robertson, the senior human resource generalist, Kim Kirkpatrick, the team lead, and Pam Fry appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2011. She worked full time as a customer support professional. The claimant understood that when employees were unable to work as scheduled, they were required to call the employer. The employer had a specified number employees were to call. If no one answered the phone, employees could leave a message on this phone.

On October 26, 2012, the claimant signed two written warnings. One warning was for her unacceptable attendance. The claimant received the second written warning for recently failing to call in or report to work. Prior to October 2012, the claimant had been on a leave of absence. She requested an extension because of on-going medical issues. The next leave of absence was to have started October 15. The employer was unable to approve the extension because the claimant did not provide the necessary medical documentation. The employer did not say anything to the claimant about her attendance after the October 26, 2012 warnings.

The last day the claimant worked was December 12, 2012. She was scheduled to work her normal shift, 1:00 p.m. to 10:00 p.m. after December 12. The claimant did not report to work on December 15, 16, 17, 18, 19, 22, or the week of December 23. The employer does not have a

record that the claimant called to report she was unable to work any of these days. The first time the claimant called the employer and talked to her supervisor, Kirkpatrick, was December 30 to report she would be at work as scheduled that day. The claimant then learned her employment had been terminated the previous week because she had not called or reported to work after December 12.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The claimant's December 30 call suggests she did not intend to quit her employment. The evidence indicates the employer initiated the employment separation the week of December 23, 2012. For unemployment purposes, the employer discharged the claimant.

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Even though the claimant asserted she contacted the employer every day she was absent after December 12, the administrative law judge does not find her testimony credible. First, the claimant knew and understood she was supposed to call, not text when she was unable to work. Also, asserting that her roommate told the employer she was unable to work does not amount to properly reporting an absence. Most importantly, the claimant asserted she talked to Michelle during the week of December 23. Michelle was not at work this week because she was on vacation. When the claimant went to a doctor's appointment on December 17, she did not ask for a doctor's note to excuse her from work that day or any other day.

Since the claimant was absent from work from December 15 through 30, without any verified documentation she was ill and unable to work and did not properly report her absences, the employer discharged her for reasons that establish work-connected misconduct. As of December 30, 2012, 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 December 30, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's February 6, 2013 determination (reference 04) is reversed. The employer discharged the claimant for reasons that amount to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 30, 2012. 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.

The issues of overpayment and whether the claimant is eligible of waiver of overpayment of any benefits she may have received since December 30, 2012, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css