

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON D NEWMAN
Claimant

APPEAL NO. 07A-UI-03561-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

**OC: 08/13/06 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 22, 2007, reference 08, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 23, 2007. The claimant participated. The employer participated through Jacqueline Kurtz, Jeffrey Guggenmos and Debbie Nelson.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with his work and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by this company from October 23, 2006 until February 26, 2007, when he was discharged from employment. Mr. Newman worked as a full-time technical support and was paid by the hour. The claimant was discharged after he became angry when being counseled about his work productivity and stated loudly “this is bullshit” to his supervisor. The claimant’s conduct and statement took place in the work area where other employees were performing their services. The decision was made to terminate Mr. Newman as he had been specifically warned for similar conduct in the past and was aware that he could be terminated if it occurred again.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in showing that Mr. Newman’s discharge took place under disqualifying conditions. The evidence in the record establishes that Mr. Newman had previously been warned for similar conduct and was aware that his job was in jeopardy and that he could be terminated if he acted inappropriately or insubordinately. Mr. Newman was discharged when he responded in a loud and angry manner “this is bullshit” when being given a

mild work-related reminder by his supervisor. Based upon the previous warnings that had been issued to the claimant in his most recent conduct, the administrative law judge must conclude that the claimant's separation took place for misconduct and benefits are denied.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. Mr. Newman was overpaid \$270.00.

DECISION:

The decision of the representative dated March 22, 2007, reference 08, is reversed. The claimant was discharged for misconduct. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times

claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$270.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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