

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER A AHLF**  
Claimant

**APPEAL NO. 08A-UI-02550-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**OC: 06/17/07 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 7, 2008, reference 06, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 31, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Jacqueline Kurtz participated in the hearing on behalf of the employer with a witness, Stacey Wolsenbarger. Exhibits A and One 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 a customer service representative from November 19, 2007, to January 30, 2008. The claimant was verbally warned about her attendance after absences on December 3, December 9, December 26, January 19, January 20, and January 21. The absences were all due to the claimant's or her daughter's legitimate illness, and the claimant notified the employer regarding her absences.

The claimant was sick and unable to work due to having the flu on February 2 through 5, 2008. She called each day and notified the employer that she was sick. On February 5, 2008, the claimant's supervisor informed her at 2:00 p.m. that she would be terminated if she did not submit a doctor's note excusing her from working by the close of business that day. The claimant had not gone to the doctor during her illness and could not see a doctor that day because she was unable to pay the upfront fee required to see a doctor since she did not have insurance. The claimant called on February 6, 2008, and left a message for her supervisor asking him if he wanted her to sign any separation documentation.

The employer discharged the claimant on February 7, 2008, for excessive absenteeism and for failing to provide a doctor's excuse for her final absences.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

### **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.

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(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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful

wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant was absent for legitimate reasons and called in to report her absences. The failure to submit a doctor's excuse cannot be considered willful misconduct since she was given short notice to get a doctor's excuse and did not have the money to see the doctor.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

**DECISION:**

The unemployment insurance decision dated March 7, 2008, reference 06, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css