IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 – EI

MARQUIS B TAYLOR
Claimant

TEMPS NOW HEARTLAND LLC
Employer

APPEAL NO. 10A-UI-11179-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/04/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's August 6, 2010 decision (reference 02) 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. A telephone hearing was held on September 29, 2010. The claimant participated in the hearing. The employer did not talk to anyone in the Appeals Section prior to the scheduled hearing to provide the phone number and witness's name. After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer requested the hearing be reopened.

Based on the employer's request to reopen the hearing, the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer establish good cause to reopen the hearing?

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

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant started working for the employer on February 22, 2010. The employer assigned the claimant to work at MetoKote.

MetoKote ended the claimant's assignment because he accumulated too many attendance points in a 60-day period. His last attendance occurred on April 8, 2010, when the claimant did not report to work. Instead of working, he interviewed for a higher paying job. The claimant did not call the employer or MetoKote on April 8 because his cell phone had recently been stolen or misplaced.

Although MetoKote is the only client the employer services in the claimant's area, the employer thought there was a possibility the claimant could work at another location. When the claimant

picked up his final paycheck, he informed the employer he had found a better job. The claimant started a new job, but it took longer to start this job than he had anticipated.

The hearing notice was mailed to the parties on August 31, 2010. The employer tried to call the Appeals Section a couple of times on September 28. When the employer was unable to get through to the Appeals Section on September 28, the employer faxed an appearance at 4:30 p.m. or later. Since the employer received confirmation the fax had been successfully transmitted, the employer did not attempt to call the Appeals Section before the 10 a.m. hearing on September 29. The Appeals Section personnel did not notice the employer's fax. As a result, this information was not forwarded to the administrative law judge before the hearing. The administrative law judge knew nothing about a fax until the employer called the Appeals Section at 10:20 a.m. By the time the employer called on September 29, the claimant had been excused and hearing was closed. The employer requested the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The employer's failure to follow the hearing instructions - call to provide the phone number at which the employer can be contacted – does not establish good cause to reopen the hearing. The fax the employer sent late afternoon, the day before the hearing, was not retrieved by Appeals Section personnel until after the 10 a.m. hearing. The administrative law judge did not know about the employer's September 28 fax until the employer called in late for the 10 a.m. Specific instructions are provided on the hearing notice to eliminate the problem of not receiving faxes before a hearing. The employer's failure to follow up and contact the Appeals Section by phone before the 10 a.m. hearings resulted in the administrative law judge not having a phone number at which to contact the employer. The hearing will not be reopened because the employer failed to follow the hearing instructions.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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).

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).

The claimant became unemployed when MetoKote ended his assignment. The record established justifiable reasons for the client ending his employment, but the record does not establish that the claimant committed work-connected misconduct. Therefore, based on the reasons for this employment separation, the claimant is qualified to receive benefits as of July 4, 2010.

DECISION:

The employer's request to reopen the hearing is denied. The representative's August 6, 2010 decision (reference 02) is affirmed. The claimant's assignment ended for justifiable reasons. The record does not establish that the claimant committed work-connected misconduct. Therefore, based on this employment separation, the claimant is qualified to receive benefits as of July 4, 2010, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw