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

CARLA F MOORE Claimant	**APPEAL NO: 10A-UI-07944-DWT** **ADMINISTRATIVE LAW JUDGE DECISION**
ASSOCIATED COURIERS INC Employer	
	OC: 10/25/09 **Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed a representative's November 25, 2009 decision (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. A telephone hearing was initially held on July 19, 2010. The claimant participated in the hearing. The employer responded to the hearing notice, but was not at the phone number previously provided to the Appeals Section.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer had given the witness's home phone number to contact instead of the work or cell phone number. The employer was not at home at 8 a.m. The employer requested that the hearing be reopened. The hearing was reopened.

Another hearing was scheduled on August 25, 2010. Again, the claimant participated in the hearing. The employer provided his cell phone number and this number was called. The employer's witness did not answer the phone and a message was left for the employer to contact the Appeals Section immediately. After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer again requested that the hearing be reopened.

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

ISSUES:

Is there good cause to reopen the hearing?

Did the employer file a timely appeal or establish a legal excuse for filing a late appeal?

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

FINDINGS OF FACT:

The claimant started working for the employer on March 2, 2009. The claimant worked as a full time courier. When the claimant had some medical issues in July, her doctor restricted her from working for a week. When the claimant learned she was pregnant in late September, she talked to the employer's compliance manager. The employer agreed she not have to work on high radiation days. The claimant delivered radiation.

On October 28, 2009, the claimant gave the employer a doctor's note stating she could not be exposed to any radiation until after January 4, 2010. After talking to the employer, the claimant understood the employer asked her to resign. The claimant submitted her resignation on October 28, 2009, so the employer could rehire her. If the claimant had not resigned, the employer was prepared to discharge her for having two accidents since March 2, 2009.

The claimant established a claim for benefits during the week of October 25, 2009. On November 25, 2009, a representative's decision was mailed to the claimant and employer. The decision held the claimant qualified to receive benefits. The decision also informed the parties that the decision was final unless an appeal was filed or postmarked on or before December 5, 2009.

The employer faxed its appeal letter on December 2, 2009. The Appeals Section did not acknowledge receiving the faxed appeal letter by scheduling an appeal hearing. The employer did not follow-up on its appeal until receiving a statement of charges. On June 2, 2010, the employer again faxed an appeal from the November 25, 2009 decision.

A telephone hearing was initially held on July 19, 2010. Although both parties responded to the hearing notice and provided phone numbers for the administrative law judge to contact them for the hearing, the employer's witness was not at the phone number provided to the Appeals Section. The hearing was reopened and another hearing was held on August 25, 2010. When the hearing was reopened, the parties were advised to provide the phone number they could be contacted at before the scheduled hearing. The employer provided the cell phone number of the employer's witness.

On August 25, the claimant again participated in the hearing. The employer's phone number was called, but the employer's witness did not answer the phone. A message was left on the witness's cell phone. After the hearing was closed and the claimant had been excused, the employer's witness contacted the Appeals Section. The employer requested that the hearing be reopened again.

The employer asserted his cell phone did not ring or he did not hear it ring. About 10 or 15 minutes after the hearing had been scheduled; the employer noticed a voice mail message on his cell phone. He then called the Appeals Section at 3:17 p.m.

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). Since this was the second time a hearing was scheduled

and the employer again did not timely answer the phone number that was provided to the Appeals Section to contact the employer for the hearing, the employer did not establish good cause to reopen the hearing a second time. It is a party's responsibility to make sure the phone number provided to the Appeals Section works. Even though the employer was in Chicago on August 25, it is still the employer's responsibility to make sure he provides a phone number where he can be immediately reached for the scheduled hearing. The employer's request to reopen the hearing is denied.

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code section 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the record indicates the employer filed an appeal on December 2, 2009, or before the December 7, 2009 deadline for appealing expired. Since December 5 was a Saturday, the deadline to appeal is automatically extended to Monday, December 7, 2009. The employer filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the employer's appeal.

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 *m*isconduct. Iowa Code sections 96.5-1, 2-a. The administrative record indicates the employer ended the claimant's employment by asking her to resign. For unemployment insurance purposes, the employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law or voluntarily quit. *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 record does not establish that the claimant committed work-connected misconduct. Therefore, as of October 25, 2009, the claimant is qualified to receive benefits.

DECISION:

The employer's request to reopen the hearing for a second time is denied. The representative's November 25, 2009 decision (reference 01) is affirmed. The employer filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the employer's appeal. The employer initiated the claimant's employment separation for reasons that do not constitute work-connected misconduct. As of October 25, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs