IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARK A BOARDMAN
Claimant

ARROW EXPRESS DELIVERY SYSTEMS
Employer

APPEAL NO. 06A-UI-09538-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/20/06 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 26.14(7)(b) and (c) – Request to Reopen

STATEMENT OF THE CASE:

Arrow Express Delivery Systems, Inc. (employer) appealed a representative's September 21, 2006 decision (reference 02) that concluded Mark A. Boardman (claimant) was qualified to receive unemployment insurance benefits and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on October 11, 2006. The claimant participated in the hearing. No one on the employer's behalf participated in the hearing.

The employer's representatives contacted the Appeals Section at 8:40 a.m. for an 8:00 a.m. hearing. The employer's representative asserted someone on the employer's behalf contacted the Appeals Section prior to the hearing. The employer's representative did not have a control number and had not personally contacted the Appeals Section. The employer was asked to contact the Appeals Section by Friday, October 13, if the employer learned who had called the Appeals Section. By October 13, the employer was to provide the control number the employer received. The employer did not contact the Appeals Section again.

Based on the administrative file 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 discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 10, 2006. The claimant worked as a full-time delivery driver. Prior to August 23, 2006, the employer had not given the claimant any written warning for performance-related issues. The employer talked to the claimant prior to August 23 about customer complaints and the claimant's attitude.

On August 23, the claimant came back to the station about 5:00 p.m. even though his last delivery was at 2:50 p.m. Since his last delivery was 45 minutes from the employer's station, the employer expected the claimant back much earlier. The claimant had contacted the employer earlier that day and notified the employer he was running late. When the claimant picked up an international package, he had to spend time looking up information before it could be shipped. The international package delayed the claimant from getting back to the employer's station before 5:00 p.m.

The employer questioned the claimant as to why he did not get back to the office earlier. The claimant became upset when the employer questioned him. While the employer asserted the claimant made the comment, "F___ DHL, the claimant does not remember making such a comment. The claimant had problems contacting the employer as frequently as the employer wanted because there were not many cell phone towers in the area the claimant worked and pay phones were hard to find. The claimant used a coupler because of problems with phones on his route.

On August 23, the employer discharged the claimant for showing disrespect to the employer's customer, DHL.

A hearing notice was mailed to the parties on September 29, 2006. The hearing notice informed the parties a telephone hearing would be held at 8:00 a.m. on October 11, 2006. The notice further informed the parties that each party must contact the Appeals Section prior to the hearing and provide the telephone number(s) and name(s) of people to contact before the scheduled hearing. The claimant followed the instructions on the hearing notice. The employer did not. The employer was not called at 8:00 a.m. on October 11, 2006 for the hearing.

The employer contacted the Appeals Section at 8:40 a.m. for the 8:00 a.m. hearing. Although the employer was given the opportunity to contact the Appeals Section by Friday, October 13, and provide information that the employer had followed the hearing instructions, the employer did not contact the Appeals Section again. On October 11, the employer's representatives indicated they wanted the hearing to be rescheduled.

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 evidence indicates the employer did not follow the instructions on the hearing notice. Therefore good cause to reopen the hearing has not been established. The employer's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 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 employer may have had compelling business reasons for discharging the claimant. The record does not establish that the claimant intentionally or substantially disregarded the employer's interests. The record does not establish that the claimant committed work-connected misconduct. If the claimant used profanity in describing a customer, the claimant does not recall doing so. This single isolated hotheaded incidence does not rise to the level of work-connected misconduct.

DECISION:

The employer's request to reopen the hearing is denied. The representative's September 21, 2006 decision (reference 02) is affirmed. The employer discharged the claimant for reasons that do not rise to the level of work-connected misconduct. As of August 20, 2006, the claimant is qualified to receive unemployment insurance benefits, 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/pjs