IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIAN J BOWN
Claimant

CAREER SYSTEMS DEVELOPMENT CORP
Employer

APPEAL NO: 13A-UI-09516-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/21/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Career Systems Development Corporation (employer) appealed a representative's August 9, 2013 decision (reference 01) that concluded Brian J. Bown (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on September 24, 2013, and reconvened and concluded on October 2, 2013. The claimant participated in the hearing and presented testimony from one other witness, Christopher Shadduck. Sandra Linsin of Employer's Edge appeared on the employer's behalf and presented testimony from two witnesses, Lisa Warren and Chris Fisher. During the hearing, Employer's Exhibits One through Eight and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 16, 2011. He worked full time as safety and security manager of the employer's Ottumwa, Iowa area job corps center. His last day of work was July 5, 2013. The employer discharged him on that date. The reason asserted for the discharge was the claimant's handling of the expulsion of a student on June 28.

At about 9:00 a.m. on June 28 the claimant came into the employer's welcome center/security office. Another staff member advised the claimant that a young adult student, who was being discharged from the program due to violence, was ready to be taken to the bus station in Des Moines. The claimant proceeded to escort the student to the waiting passenger van. The student became belligerent and made verbal threats of violence to the claimant. For a period of

time he refused to enter the van, until the claimant requested a nearby officer, Fisher, to call local police to come and take the student to jail for trespassing if he did not agree to be taken to Des Moines. The student then agreed to enter the van, and Fisher advised the police that the matter was resolving and that they need not come. Because of the verbal threats the student had made, the claimant then requested the student to place his hands on the vehicle and he made a cursory physical search of the student, quickly patting him down and checking his pockets. The student then got into the vehicle. The claimant and Fisher then drove him to the bus station in Des Moines.

Upon arriving at the bus station, personnel at the bus station indicated that the student could not board the bus with his personal belongings in garbage bags, as they had been brought from the center. She indicated, however, that they could be placed in boxes; there were boxes readily available at the bus station, as well as at a nearby business. The student indicated that he would take care of things, so the claimant and Fisher left the student and returned to the employer's center.

Upon their return, the center director's acting designee told the claimant to bring in an off-duty officer to take boxes to the student in Des Moines. While the claimant responded that this was not necessary because the student had already obtained any necessary boxes, he proceeded to address the matter. It was determined that the student was no longer at the bus station, but had gone to a homeless shelter, with the intent of getting transportation not back to his home in Minnesota, but to his girlfriend's home in Davenport, Iowa. Rather than bring in an off-duty officer and pay overtime, the claimant requested a part time officer, Shadduck, who had only two hours left on his shift but who would not need to be paid overtime, to make the return trip to Des Moines; Shadduck agreed. Since the claimant had some concern that Shadduck could become fatigued on the drive given he had been on duty all day, the claimant decided that since he was just about to go off duty himself, he would also ride along, as did another officer who was at the end of his shift. Both the claimant and this second officer were salaried employees, so their accompanying Shadduck would also not result in any additional overtime. The three of them left the center with the boxes at about 4:00 p.m., delivered the boxes, and then returned to the center.

The employer asserted that the claimant's search of the student was contrary to the employer's official procedure on search and seizure. The only language of that procedure which was introduced during the hearing was that "a request for the search of a student . . . will be directed to the Safety & Security Manager . . ." that "a search prompted by the reasonable suspicion that health and safety of the . . . staff . . . are immediately threatened will be conducted with as much speed and dispatch as may be required to protect persons and property . . ." and that "search of a student's person . . . shall be conducted by a person of the student's gender, in the presence of another staff member of the same gender, and in a manner that is minimally intrusive to the student based on the reasonable suspicion justifying the search." The employer asserted that it interpreted the policy as still requiring the approval of the center director prior to commencing any physical search. The testimony of all of the security personnel who testified at the hearing was that the procedure had always been interpreted as requiring the approval of either the center director or the safety and security manager, who was the claimant. The employer provided at least second-hand information suggesting that the claimant's handling of the search had been somewhat abusive and rough; however, there was no first-hand testimony to that effect; rather, the first-hand testimony was that the search was very minimal and non-aggressive.

The employer further asserted that the claimant's usage of Shadduck to make the return trip to Des Moines and then accompanying Shaddock himself as well as the other salaried officer was wasteful. The employer has not established how this approach, which resulted in no overtime, was any more wasteful than the method suggested by the center director's acting designee, or that any of the three would have remained at the center much if any time later than their 4:00 p.m. departure time if they had not left on the errand.

There was no showing of any other disciplinary issues regarding the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the issues relating to the search and transport of the expelled student on June 28, 2013. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 9, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs