

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSUE F DE LEON
Claimant

APPEAL NO: 14A-UI-13129-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREER SYSTEMS DEVELOPMENT CORP
Employer

OC: 11/30/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 12, 2014 determination (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 nondisqualifying reasons. The claimant participated at the January 16 hearing. Sam Krause represented the employer. Helena Parks, the human resource manager, appeared on the employer's behalf. During the hearing, Employer Exhibits One through Six were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant on September 13, 2014, as a full-time residential advisor. When the claimant started working, he received a copy of the employer's policies. The employer's fraternization policy informs employees the employer does not tolerate fraternization between employees and students. If an employee engages in any fraternization, the employer considers the employee to have violated of the Employee Rules of Conduct. (Employer Exhibit Six.) The claimant understood the employer's fraternization policy.

On November 9, a student reported that the day before the claimant asked for her phone number and invited her to an activity off campus that was not sponsored by the employer. (Employer Exhibits Four and Five.) After the employer started investigating the incident reported by the female student, the employer discovered another potential policy violation that occurred on November 1.

On November 10, a male student told S.B. he was excited about a job interview he had the next day. At the end of this conversation, the student made a comment that the claimant offered to lend him money and loan him his car if the student needed any extra assistance. (Employer Exhibit Three.) On November 13, the male student was concerned about getting the claimant

into trouble and told a senior administrative assistant that the claimant had only offered to let the student borrow some money from him and offered to let the student use his car. The student verified that the claimant did not give the student any money or actually let the student use his car. (Employer Exhibit Two.)

Although the claimant denied that he offered to lend the male student any money or use his car and denied he asked for a female student's phone number or asked her to go to an outside activity, the employer discharged him on November 13, 2014, for violating the employer's fraternization policy. (Employer Exhibit One.)

The claimant established a claim for benefits during the week of November 30, 2014. He has filed claims and received benefits since November 30, 2014. The employer is not one of the claimant's base period employers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The employer made the decision to discharge the claimant based on two students' statements. These students did not testify at the hearing. While, the administrative law judge understands why the employer discharged the claimant, the claimant's testimony is credible. As a result, the claimant's testimony must be given more weight than the employer's hearsay information. If the student or students had testified, the outcome may have been different. But based on the evidence presented at the hearing, the employer did not establish that the claimant violated the fraternization policy or committed work-connected misconduct. As of November 30, 2014, the claimant is qualified to receive benefits.

The employer's account will not be charged during the claimant's current benefit year because the employer is not a base period employer.

DECISION:

The representative's December 12, 2014 determination (reference 02) is affirmed. The employer discharged the claimant for business reasons, but did not establish that the claimant

committed work-connected misconduct. As of November 30, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs