

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN J SALINAS

Claimant

APPEAL NO. 17A-UI-02081-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONIFER REVENUE CYCLE SOLUTIONS

Employer

OC: 01/15/17

Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Benefit Overpayment

STATEMENT OF THE CASE:

Conifer Revenue Cycle Solutions, the employer, filed a timely appeal from the representative's February 15, 2017, reference 01, decision that held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 17, 2017. Claimant participated. The employer participated by Ms. Kayla Blessman, Human Resource Manager. Employer's Exhibits A through H were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Juan Salinas was employed by Conifer Revenue Cycle Solutions from July 6, 2010 until December 19, 2016, when he was discharged from employment. Mr. Salinas last held the position of Medical Eligibility Service Director and was paid by salary. His immediate supervisor was Ms. Carole Wakeman, Senior Director.

Mr. Salinas was discharged from his employment when the employer reasonably concluded that Mr. Salinas had knowingly violated the company conflict of interest policies. The company found there was a relationship by blood or affinity between the claimant and Yesenia Rodriguez, a person that was also employed by the company and that Ms. Rodriguez was a subordinate to Mr. Salinas in the business unit's chain of command.

In early December 2016, the employer received an anonymous complaint from an employee alleging that Ms. Rodriguez was Mr. Salinas' sister and that the work Ms. Rodriguez was performing for the company in the business unit she was employed, was under Mr. Salinas' management.

The company has a strict “conflict of interest” policy. The policy prohibits not only actual conflicts but also employment situations that can give the appearance that there is a conflict of interest. The policy prohibits the employment of relatives in general, but also prohibits members of management from employing any family members in units under which they have any management authority. Under the policy, a “relative” is defined as any person who is related by blood or marriage or whose relationship with the employee is similar to that of persons who are related by blood or marriage and includes persons living in the same household. The policy further provides for disciplinary action up to and including termination for violation of the policy. The company also has an “employment of relatives” policy that defines immediate family as: spouses, domestic partners, those related domestic partners, parents, children, brothers, sisters, current brothers-in-law, current sisters-in-law, fathers-in-law, mothers-in-law, step parents, step brothers, step sisters, step children, step grandchildren, grandparents and grandchildren. Policy number four prohibits its members of management and human resource department from employing any family member in a business unit that they have management authority in. The company’s intent of the rule is to avoid conflicts and claims of partiality.

In order to ensure compliance with the company’s rule, Mr. Salinas and other managers were required to complete a yearly questionnaire. On his most recent conflict of interest disclosure review, Mr. Salinas answered “no” to the question whether he had any “relatives” working within his facility or his business unit. The question defines relatives as spouses, domestic partners, those related by domestic partnerships, parents, children, brothers, sisters, current brothers and sisters-in-law, fathers and mothers-in-law, step parents, step brothers and sisters, step children, step grandchildren, grandparents and grandchildren.

The employees are expected to not only adhere to the policy but to disclose any potential conflicts of interest prior to the conflict being discovered by the employer. The policy warns employees that failure to comply with the company’s conflict of interest and/or employment of relatives policies may subject to disciplinary action up to and including termination.

Based upon the allegations that were made by the anonymous worker, the company investigated. The investigation showed Facebook entries from an individual identified as Yesenia Rodriguez’s spouse. The entries specifically referred to Mr. Salinas as the “brother-in-law” of Yesenia Rodriguez’s husband and referred to Mr. Salinas as the “uncle” of the couple’s children who were depicted. The company verified that Ms. Rodriguez’s maiden name was Salinas. The Facebook entries also showed Mr. Salinas with Yesenia Rodriguez and her family members. The investigation further disclosed that Mr. Salinas was present when Ms. Rodriguez was hired into his business unit and that Mr. Salinas had not disclosed a potential conflict of interest to the company.

When questioned by the employer about the relationship between himself and Yesenia Rodriguez, Mr. Salinas provided unresponsive answers such as, “I have a sister by that name but she does not work for me.”

It is the claimant’s position that although he is “acquainted” with the female depicted in the Facebook pictures, he is unaware if she is his sister or not because he was raised by grandparents and not acquainted with his sister. Mr. Salinas explains the identification of him being the “uncle” of Ms. Rodriguez’s children as a misnomer because the term “uncle” is customarily used to describe any male with a similar ethnic background. Mr. Salinas agrees that he was physically present when Ms. Rodriguez was hired, but asserts he played no part in the decision to hire her.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Misconduct "must be substantial" to justify the denial of unemployment benefits. "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, the employer is a third party vendor for hospitals and medical institutions that provides assistance in billing and other financial transactions. The company places a strong emphasis on preventing any conflicts of interest that may arise in the employment. The company also places a high emphasis on the integrity of its employees and the adherence of

employees to the company's standards of conduct. The policy also prohibits employees who are in a position to influence business decisions from having any relative or person that is living in the same household from "working in the same line authority" within the company. The company defines immediate family as spouses, domestic partners, individuals related by domestic partnerships, parents, children, brothers, sisters, current brothers and sisters-in-law, fathers and mothers-in-law, step parents, step brothers, step sisters, step children, step grandchildren, grandparents and grandchildren. If a relationship is established after employment, one of the related individuals is to be transferred out of the employment unit.

Because the company believes that employing relatives in the same unit of the company organization causes conflicts and affects employee morale, members of management and the human resource department are not to employ any family members at the business unit that falls under their scope of responsibility. Employees that become aware of a conflict of interest are expected to disclose the conflict immediately to the employer and to record a resolution of the conflict with the human resource department. Failure to comply with the company's employment of relatives policy subjects employees to disciplinary actions up to and including termination of employment. Mr. Salinas, as a department director, was very familiar with company's conflict of interest and employment of relatives policies.

The claimant was discharged when the employer reasonably concluded that an individual employed by the company in Mr. Salinas' unit of business and in his chain of command was his sister.

In determining whether the allegation was true, the employer questioned the claimant and independently reviewed Facebook entries made by others. The Facebook entries posted by the spouse of Yesenia Rodriguez's husband, identified Mr. Salinas as being the uncle of the children of he and Ms. Rodriguez, and also refers to the claimant as Mr. Rodriguez's "brother-in-law". Other photographs show the claimant with Yesenia Rodriguez in social settings. A review of Mr. Rodriguez's driver's license and her social security card verified that Ms. Rodriguez's maiden name was "Salinas". These factors led the employer to the reasonable conclusion that Yesenia Rodriguez was a known sibling of Mr. Salinas and that her employment within Mr. Salinas' chain of authority was both a conflict of interest and a violation of the company policy that prohibited the employment of relatives.

The employer also concluded that Mr. Salinas had been present when Yesenia Rodriguez was hired by the company and in a position to exert management authority over her and a violation of policy and a potential source of conflict among employees. The claimant had been given the opportunity to disclose the relationship, he had not done so. When questioned, Mr. Salinas provided answers that were at best equivocal.

For these reasons, the administrative law judge concludes the employer has, by a preponderance of the evidence, met its burden of proof in showing that the claimant was discharged for misconduct in connection with his employment. Accordingly, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and it otherwise eligible. The issue of whether the claimant has been overpaid unemployment insurance benefits is remanded to the claims division for determination.

DECISION:

The representative's decision dated February 15, 2017, reference 01, is reversed. The claimant was discharged for misconduct in connection with his employment. Accordingly, the claimant is

disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and it otherwise eligible. The issue of whether the claimant has been overpaid unemployment insurance benefits is remanded to the claims division for determination.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs