CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

C·U·I·A·B

OXNARD OFFICE OF APPEALS
1901 N Rice Ave., Ste 300
OXNARD CA 93030-7910

(805) 485-5389

MICHAEL B MURRAY
c/o PERSHING SQUARE LAW FIRM
Claimant-Appellant

KERN SCHOOLS FEDERAL CREDIT UNION
Account No: 152-1786
Employer

Case No. **6477356**

Issue(s): 1030/32, 1256

Date Appeal Filed: 01/15/2020

EDD: 0190 BYB: 12/08/2019

Date and Place of Hearing(s):
(1) 02/13/2020 BAKERSFIELD

Parties Appearing:
Claimant, Employer

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 30 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Robert E. Nagle, Administrative Law Judge

MICHAEL B MURRAY
6900 RANDALL ST
BAKERSFIELD, CA 93308-1931

Date Mailed: FEB 14 2020

Case No.: 6477356 **Oxnard Office of Appeals**
CLT/PET: Michael B. Murray ALJ: Robert E. Nagle
Parties Appearing: Claimant, Employer
Parties Appearing by Written Statement: None

REV

ISSUE STATEMENT

The claimant appealed from a determination disqualifying the claimant for unemployment benefits under Unemployment Insurance Code, section 1256. A ruling held the employer's reserve account was not subject to charges. The issue in this case is whether the claimant was discharged for misconduct connected with the most recent work.

FINDINGS OF FACT

The claimant worked as a senior help desk technician for Kern Schools Federal Credit Union for six years and three months. As of the claimant's last day of work on November 8, 2019, his rate of pay was $36.13 per hour.

The claimant has a serious illness involving high blood pressure and a heart issue. The claimant has taken several days off to seek medical treatment and was demoted to a help desk technician in April 2019.

On November 5, 2019, the claimant was locked out of his cell telephone and could not access several medical programs providing essential medical information. The claimant installed a program in violation of the employer's policy to access his medical information.

The claimant's supervisor was not available for the claimant to obtain authorization to install the unauthorized program.

The claimant worked November 6 through 8, 2019. The claimant then went on a medical leave of absence from November 11, 2019 through November 27, 2019.

The employer conducted a routine audit of the claimant's computer when he left on a leave of absence. The employer discovered the unauthorized program on the claimant's computer giving the claimant potential access to unauthorized information. Because the program was on the claimant's computer for only three days prior to leaving on his leave of absence, the employer was not able to conclude the claimant in fact accessed any unauthorized information for his benefit or to cause harm to the employer.

A single act of disobedience, without prior reprimands or warnings for insubordination, generally is not misconduct unless the act interferes with the orderly conduct of the employer's business or injures, or threatens to injure, the employer's interest in a consequential or substantial manner. (*Paratransit, Inc. v. Unemployment Insurance Appeals Board* (2014) 59 Cal.4th 551; California Code of Regulations, title 22, section 1256-30, com, before ex.1).

The policy of the Unemployment Insurance Code is to provide benefits to "persons unemployed through no fault of their own. Accordingly, fault is the basic element to be considered in interpreting and applying the code sections on unemployment compensation. *Rowe* v. *Hansen* (1974) 41 Cal.App.3d 512, 521.

Conduct that warrants discharge does not constitute misconduct under section 1256 unless it evinces culpability or bad faith. *Amador v. California Unemployment Insurance Appeals Board* (1984) 35 Cal. 3d 671, 680 fn 4.

In the present case, a careful review of the entire evidence does not disclose more than inefficiency or unsatisfactory performance on the part of the claimant which culminated in the claimant's discharge. The record does not establish that the claimant willfully or intentionally disregarded the employer's interest or that the occurrences forming the basis for the discharge were deliberate violations of standard good behavior which the employer has the right to expect of his employee. Here, the employer discharged the claimant for installing an unauthorized program on the employer's computer system. The employer has not shown the claimant was involved in an improper purpose other than to access his own data. Although the claimant was unquestionably discharged, the termination was not for misconduct on the part of the claimant within the meaning of that term as used in Unemployment Insurance Code, section 1256.

This decision in no way challenges the correctness of the employer's decision to terminate the claimant's employment. Given the circumstances, that might even have been a prudent business decision. Yet, a claimant's eligibility for benefits is judged by a test different than whether his performance was satisfactory. Before a finding of misconduct can be made, a claimant's actions must evince culpability or bad faith. (Amador v. CUIAB (1984) 33 Cal. 3d 671, 678). The conduct may be harmful to the employer's interests and justify the employee's discharge, but a claimant's actions require a disqualification from unemployment insurance benefits only if they are willful, wanton, or equally culpable. (Id.) Under the facts of the instant case, the administrative law judge was unable to confirm that the claimant's actions met the requirements for a disqualification from benefits.

DECISION

The Department determination is reversed. The claimant is not disqualified for benefits under Unemployment Insurance Code, section 1256. Benefits are payable provided the claimant is otherwise eligible. The employer's reserve account is subject to benefit charges under Unemployment Insurance Code, sections 1030 and 1032.

OX: REN 1/2