

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MELANIE B TRIPPLETT**  
Claimant

**TINDAL LAW OFFICE PLC**  
Employer

**APPEAL 19A-UI-02723-SC**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/10/19**  
**Claimant: Respondent (1-R)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On March 28, 2019, Tindal Law Office PLC (employer) filed an appeal from the March 26, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination Melanie B. Tripplett (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing. A hearing was held in Ottumwa, Iowa on August 28, 2019 at 10:00 a.m. The claimant did not respond to the hearing notice and did not participate. The employer participated through Owner/Attorney Doug Tindal and Secretary Deborah Wagner. The Employer's Exhibits 1 through 11 were admitted into the record. The Employer's Exhibit X was not admitted into the record as it was a statement from Tindal drafted for the hearing and would be duplicative as he was available to testify during the hearing.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Secretary beginning on December 14, 2016 and was separated from employment on March 12, 2019 when she was discharged. The claimant was responsible for finalizing payroll along with filing and tracking other sensitive matters. In December 2018, Owner/Attorney Doug Tindal began to suspect that the claimant was falsifying her timesheets. He signed a paycheck for her that he felt was too large for the amount of time she worked.

Tindal was out of the office from February 4 through February 15, 2019. He tasked Secretary Deborah Wagner with tracking the claimant's arrivals and departures from the office during that

time. He then asked her to compare the times the claimant was in the office with what she reported on her timesheet. Wagner found multiple discrepancies in the claimant's reported time worked. The final incident occurred on February 12, when the claimant left at 1:10 p.m. to get ice melt for her home but reported she worked until 4:30 p.m.

When Tindal returned to the office on or about February 18, Wagner gave him the documentation she had collected and told him that there were discrepancies that confirmed his suspicions. Tindal had legal work to do and struggled personally with the claimant's dishonesty. The claimant's last day worked was March 5, after which she took a leave of absence for medical reasons related to her pregnancy. On March 12, Tindal sent the claimant a text message stating she was discharged. He did not explain in the text message why she was discharged but it was due to her dishonesty in the time reporting.

The claimant filed her claim for benefits effective March 10, 2019. Whether she was able to and available for work effective March 10 has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

The administrative record reflects that claimant has received unemployment benefits in the amount of \$4,407.00, since filing a claim with an effective date of March 10, for the thirteen weeks ending June 8, 2019. The administrative record also establishes that the employer participated in the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides, in relevant part:

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.

...

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

This definition of misconduct 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). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The final act of misconduct must also be a current act to result in a disqualification from benefits. A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

In this case, the claimant had no warning that she was being investigated for her time reporting and she was discharged approximately three weeks after the final incident occurred. Therefore, while the final act may have been misconduct, it is not considered a current act. Because the act for which the claimant was discharged was not current and the claimant may not be

disqualified for past acts of misconduct, benefits are allowed. The employer has not met its burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

Whether the claimant was able to and available for work effective March 10 is remanded to the Benefits Bureau of IWD for a fact-finding interview to include the claimant and the employer followed by an unemployment insurance decision issued to both parties with appeal rights.

**DECISION:**

The March 26, 2019, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

**REMAND:**

Whether the claimant was able to and available for work effective March 10 is remanded to the Benefits Bureau of IWD for a fact-finding interview to include the claimant and the employer followed by an unemployment insurance decision issued to both parties with appeal rights.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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