

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DORIS E FAUX**  
Claimant

**APPEAL 16A-UI-00032-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOLIGHTLY CONSTRUCTION INC**  
Employer

**OC: 01/04/15  
Claimant: Respondent (1)**

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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:**

The employer filed an appeal from the December 23, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on January 22, 2016. The claimant participated personally. The employer participated through James L. Sayre, Attorney at Law. Employer witnesses included Michael Golightly, Owner, and Patricia Hostetler, sister of Michael Golightly. The administrative law judge took official notice of the administrative record, including fact-finding documents. No exhibits were offered or admitted.

**ISSUES:**

Was the claimant discharged for a current act of disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any 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 part time as a bookkeeper beginning in 2007, and was separated from employment on December 9, 2015, when she was discharged.

Prior to the claimant's discharge, she was laid off due to a lack of work on November 9, 2015. At the time of her layoff, Mr. Golightly informed the claimant that the layoff was due to cutting costs. Between November 9, 2015 and December 9, 2015, the employer determined the claimant would not return to work, and would be discharged. The undisputed evidence is that at the time of the discharge, Ms. Faux was told it was due to "property taxes not being paid."

In fall 2015, and before the claimant was laid off in November, the employer was made aware that its property taxes were delinquent. As the bookkeeper, Ms. Faux would have been responsible for the paying of such taxes. The evidence is disputed as to whether the Ms. Faux made the employer aware that she had not paid the taxes because of a lack of money available, but that Mr. Golightly ultimately handled the paying of them before the claimant's layoff. Ms. Faux continued working after the property tax issue, and was not disciplined for her handling of the matter. At the hearing, the employer offered additional reasons why she the claimant was fired, that were not raised at the time of discharge or discussed with the claimant for her explanation, before she was discharged.

For example, Mr. Golightly indicated that the claimant refused to return the company credit card when requested by him on November 9, 2015, at the time of layoff, and that matter was taken into consideration when discharging her. The employer had no explanation for why she was not discharged sooner than December 9, 2015, if the incident took place on November 9, 2015. The claimant admitted she had not returned the credit card in error, did not use it while on layoff, and destroyed it upon notice of her discharge. The employer also asserted that while the claimant was on layoff, it discovered various bills and paperwork that had not been handled, and stated the claimant had not paid the bills for three years. Specifically, the employer referenced equipment bills, and wage-related paperwork that had not been handled. The claimant reported she had completed the requested wage information for the employer regarding her wages and submitted it to Iowa Workforce Development.

Prior to her layoff in November, the claimant stated that in August or September 2015, she met one-on-one with Mr. Golightly to discuss the status of the company finances. During the meeting, which took place in the office, the claimant presented Mr. Golightly an Excel spreadsheet containing all bills owed, how overdue they were, and the fact there was not money to pay them. Mr. Golightly denied memory of the meeting. The claimant continued to pay bills after the meeting based on priority of payroll first, utility bills and other bills.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$820.00, through the week ending January 16, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview on December 22, 2015, by way of a prepared written statement, and elected not to participate live when called by the state representative.

#### **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.

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(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

(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.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his

or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer has failed to establish the claimant was discharged for a final, current act of misconduct.

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988). The undisputed testimony at the hearing was that Ms. Faux was discharged because of her failure to properly handle the property taxes for the employer. The employer was aware of how the claimant handled the property taxes (which the employer resolved) before she was laid off due to a lack of work. Arguably, also if the withholding of the company credit card was indeed a factor in the decision to discharge Ms. Faux, it is unclear why she would remain employed on layoff for a month after the request to return it was made. With regard to both incidents, the employer cannot on one hand argue that the claimant's conduct was so egregious that it warranted discharge instead of a lesser penalty, but then allow the claimant to continue working, and remain on layoff for a month, before determining she should be discharged.

At the hearing, the employer presented a list of reasons that contributed to the claimant's discharge, in addition to the property tax explanation, offered to the claimant at the time of discharge. The employer's testimony was vague and conflicting at times, in terms of the details and timeframe of which events occurred. Based on the evidence presented, the administrative law judge is not persuaded that the employer discharged the claimant for the uncovering of new information related bills, that were discovered while she was on layoff, and which was never presented to the claimant prior to or at the time of discharge.

The administrative law judge finds it unlikely that if Ms. Faux was in fact not paying bills for three years as alleged, that consequences to the employer would have not occurred sooner, and alternately, if she was not paying bills properly, she was never made aware of it by the employer. The evidence presented supports that the claimant made the employer aware of ongoing financial problems in August or September 2015, when she presented Mr. Golightly an Excel spreadsheet containing the overdue bills and discussion of lack of funds to pay them. Additionally, the employer told the claimant on November 9, 2015, that she was being laid off to cut costs. The credible testimony is that the employer was aware of its financial status before the claimant went on layoff, even though specific unpaid bills may have been uncovered in her absence. No credible evidence substantiated the claimant willfully disregarded the bills or taxes. Based on the evidence presented, the employer may have had business reasons to separate Ms. Faux from employment, but the employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Nothing in this decision should be interpreted as a condemnation of the employer's right

to separate the claimant. The employer had a right make business decisions as it determined were in the best interest of the company. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

Because the claimant is eligible for benefits, she has not been overpaid benefits. As a result, the issues of recovery of any overpayment and possible relief from charges are moot.

**DECISION:**

The December 23, 2015, (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. The claimant had not been overpaid benefits, and the employer's account is not relieved of charges associated with this claim.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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