

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY L BENTOW**  
Claimant

**APPEAL NO. 18A-UI-08145-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MHD INC**  
Employer

**OC: 07/01/18**  
**Claimant: Respondent (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 23, 2018, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on June 28, 2018, for no disqualifying reason. After due notice was issued, a hearing was held on August 21, 2018. Claimant Kelly Bentow participated. Robin Skogman represented the employer and presented additional testimony through Cathy Mahan and Julie Rhodes. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits B, D, E, F, H, I, K and M into evidence. The administrative law judge took official notice of the materials submitted for and generated in connection with the July 20, 2018 fact-finding interview.

**ISSUES:**

Whether Ms. Bentow was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

Whether Ms. Bentow was overpaid unemployment insurance benefits.

Whether Ms. Bentow must repay overpaid benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: MHD, Inc. is a flooring wholesaler/distributor doing business as Midwest Home Distributors. The company is located in Cedar Rapids. MHD is an S corporation. Gary Skogman is President and sole shareholder. Mr. Skogman has at all relevant times been married to Robin Skogman. Mrs. Skogman was active in the company decades ago, but stepped away until she and the couple's daughters more recently took a renewed interest in company operations. Mrs. Skogman and her daughter's lack formal titles at MHD, but it was common knowledge

amongst the staff at MHD that the company was a family-owned business. In 2015, Mr. Skogman was diagnosed with Alzheimer's disease. Mr. Skogman's health issues had an increasingly adverse impact on his ability to oversee operations at MHD.

Kelly Bentow was employed by MHD as the full-time Treasurer and as a Territory Sales Manager until June 28, 2018, when Mrs. Skogman, as acting general manager, discharged her from the employment. Ms. Bentow's employment began in 2009. Her promotion to Treasurer occurred at about the same time Mr. Skogman was diagnosed with cognitive impairment. In connection with Ms. Bentow's promotion to Treasurer, Mr. Skogman made Ms. Bentow an officer of the S corporation. Ms. Bentow lacks formal business education or training. Ms. Bentow does not know what the formation of a business as an S corporation means. As Treasurer, Ms. Bentow was responsible for all aspects of the company's finances. Her duties included, but were not limited to, accounts receivable, accounts payable, managing the company's checking account, preparing accurate and timely financial reports, and forwarding relevant tax information to an external accounting firm. The bulk of the company's financial records were contained on Ms. Bentow's computer. Access to Ms. Bentow's logon credentials was required to access those records. Ms. Bentow also supervised employees, including Cathy Mahan, Office Manager and Territory Sales Manager. In 2016, the company's vice president departed and Ms. Bentow then assumed additional duties and the added title of Territory Sales Representative. Ms. Bentow's designated territories included Cedar Falls, Cedar Rapids and Iowa City. Ms. Bentow received an hourly wage and a sales commission. Prior to June 25, 2018, Ms. Bentow reported to Mr. Skogman. Ms. Bentow's assigned work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday.

During the last several months of Ms. Bentow's employment, MHD was in a downward financial spiral, due to Mr. Skogman's cognitive issues, due to Ms. Bentow's ongoing mishandling of the company's finances, and due to various forms of self-dealing on the part of Ms. Bentow. At the same time Ms. Bentow was preparing financial reports showing the business was profitable, the company's rent for its Cedar Rapids facility went unpaid for several months, the company's bank discontinued the company's line of credit and converted it to a loan, some of the company's vendors began to demand payment up front for product, and a customer with a years-old \$40,000 outstanding debt was allowed by Ms. Bentow to continue to make purchases from MHD. In 2017, Ms. Bentow diverted a \$906.76 vendor rebate payment to herself. In April 2018, MHD's checking account was overdrawn by \$1,658.19. In May 2018, MHD's checking account was overdrawn by \$9,510.26. In May 2018, Ms. Bentow took a week-long trip to Florida at the company's expense for a three-day conference. In June 2018, Ms. Bentow directed Ms. Mahan to backdate an account credit to manipulate the commission system to increase the commission she shared with Ms. Mahan. Ms. Bentow routinely took time away from work for personal business without documenting the time away, including three instances in June 2018.

Matters came to a head when the company's biggest customer, Skogman Companies, operated by Gary Skogman's brother and the brother's family, complained to Gary Skogman and to Robin Skogman about delayed delivery of a flooring order. The flooring order was hung up due to the vendor's demand for payment up front.

It was in the context of the above concerns that Robin Skogman and her daughters went to the workplace on Friday, June 22, 2018, in an attempt to address the delayed flooring shipment and the surrounding financial circumstances. After Mrs. Skogman was at the workplace that day, she received a call from one of her daughters who expressed concern that Ms. Bentow might be consuming alcohol at work. Ms. Bentow had established a practice of occasionally consuming alcohol at work, but was not consuming alcohol on that occasion. When Mrs. Skogman

telephoned the workplace to address that concern with Ms. Bentow and to ask questions about the company's finances, Ms. Bentow yelled at Mrs. Skogman and hung up on her.

On the morning of June 25, 2018, Mrs. Skogman arrived at the workplace at 8:00 a.m. to begin in earnest her investigation into the company's operational issues, especially the financial concerns. Mr. and Mrs. Skogman had decided, based on Mr. Skogman's diminished cognitive abilities that it was best for Mr. Skogman to step away from the business temporarily and for Mrs. Skogman to assume oversight of the business. Ms. Bentow showed up more than an hour late without notifying anyone that she would be late. Mrs. Skogman met with Ms. Bentow in Mr. Skogman's office and requested financial records, including access to Ms. Bentow's computer. Ms. Bentow refused the request. Ms. Bentow told Mrs. Skogman that Mrs. Skogman was not her boss and that she did not have to give the records to Mrs. Skogman. Ms. Bentow yelled at Mrs. Skogman and demanded to know whether Mrs. Skogman was going to fire her. Mrs. Skogman said she was not going to fire Ms. Bentow and that she just needed information about the company's finances. Ms. Bentow continued her refusal to provide access to the company's financial information. Based on this refusal, Mrs. Skogman directed Ms. Bentow to leave the workplace. Ms. Bentow refused the directive. Mrs. Skogman summoned warehouse staff in an attempt to have them remove Ms. Bentow from the workplace, but that failed. Mrs. Skogman then had to summon law enforcement to compel Ms. Bentow to leave the workplace. Only then did Ms. Bentow comply. Ms. Bentow left without providing Mrs. Skogman access to the company's financial information or access to her computer. Mrs. Skogman sent Ms. Bentow a letter indicating that she was on paid administrative leave until further notice. On June 28, 2018, Mrs. Skogman sent Ms. Bentow a letter discharging her from the employment. Prior to sending that letter, Mrs. Skogman learned from MHD's banker that Ms. Bentow had attempted to access the company's bank account between June 25 and 28. At the time of the discharge, Ms. Bentow had still not provided access to the financial records.

Ms. Bentow established an original claim for unemployment insurance benefits that was effective July 1, 2018. Iowa Workforce Development set Ms. Bentow's weekly benefit amount at \$502.00. Ms. Bentow has received \$2,133.00 in benefits for the five weeks between July 15, 2018 and August 18, 2018. MHD, Inc. is the sole base period employer in connection with the claim.

On July 20, 2018, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Bentow's separation from the employer. Robin Skogman represented the employer at the fact-finding interview. Ms. Bentow also participated in the fact-finding interview.

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

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(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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (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).

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).

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. See 871 IAC 24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The weight of the evidence in the record establishes a discharge based on misconduct in connection with the employment. The evidence in the record establishes that Ms. Bentow engaged in an extended pattern of intentional wrongdoing and negligence that had a profoundly adverse impact on the employer. Ms. Bentow's self-dealing touched on all aspects of her employment and included diverting a company rebate to herself, directing a subordinate to manipulate commission records, routinely engaging in personal business on company time, and generating fraudulent financial records. Ms. Bentow's wrongdoing and prolonged neglect of the duties associated with her position brought the employer to the point of crisis. The weight of the evidence establishes that Ms. Bentow knowingly and intentionally took wrongful advantage of Mr. Skogman's cognitive impairment issues. The weight of the evidence establishes that Ms. Bentow knew full well that Mrs. Skogman was at all relevant times acting as Mr. Skogman's designated agent. Ms. Bentow repeatedly and unreasonably refused Mrs. Skogman's reasonable directives to provide access to financial information and to leave the workplace after refusing to provide such information.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Bentow was discharged for misconduct in connection with the employment. Accordingly, Ms. Bentow is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Bentow must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Bentow received \$2,133.00 in unemployment insurance benefits for the five weeks between July 15, 2018 and August 18, 2018, but this decision disqualifies her for those benefits. Accordingly, the benefits Ms. Bentow received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Ms. Bentow must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid to Ms. Bentow.

In connection with the appeal proceeding, the employer desired to discuss matters that came to the employer's attention *after* the discharge. The administrative law judge deemed such evidence irrelevant in the context of the issues set for hearing, which did not include gross misconduct under Iowa Code Section 96.5(2)(b) and (c), and confined the evidence to the information the employer and employer's staff had at the time of the discharge.

**DECISION:**

The July 23, 2018, reference 01, decision is reversed. The claimant was discharged on June 28, 2018, for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$2,133.00 in benefits for the five weeks between July 15, 2018 and August 18, 2018. The claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid to the claimant.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/scn