

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEVEN SHELANGOSKI**  
Claimant

**REXCO LIMITED, LLC**  
Employer

**APPEAL 20A-UI-08324-BH-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/2020**  
**Claimant: Appellant (2)**

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Iowa Code section 96.5(1) – Voluntary Quit  
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause  
Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Steven Shelangoski appealed the July 16, 2020 (reference 01) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on August 26, 2020.

Shelangoski participated personally and through attorney Vernon Squires. Rexco Limited, LLC (Rexco) participated through president Josh Bottelman and attorney Luke Craven. Shelangoski, Bottelman, and Sue Fisher testified. Claimant's Exhibits 1 through 10 and Employer's Exhibits A through N were admitted into evidence.

**ISSUE:**

Was Shelangoski's separation from employment with Rexco a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Did Rexco discharge Shelangoski for job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Rexco hired Shelangoski on July 22, 2004. Shelangoski worked full time as the chief financial officer and vice president of finance. Bottelman was Shelangoski immediate supervisor. Rexco discharged Shelangoski on March 18, 2020.

In February of 2020, Shelangoski had a serious health issue that led to his hospitalization. Bottelman decided Rexco needed temporary help with its finances while Shelangoski received care and recuperated. Bottelman contends he went into Shelangoski's office to get materials for

the interim chief financial officer and, while there, discovered multiple failures on Shelangoski's part. He summarized them as follows in a letter dated March 18, 2020<sup>1</sup>:

- Unpaid taxes to the State of Iowa;
- Unpaid taxes to the State of Wisconsin;
- Unauthorized use of Rex Smith's signature stamp on a document;
- Incomplete Kubota dealer termination reconciliation; and
- Failure to complete the borrowing base for January 2020.

Because the letter was drafted and signed by Bottelman contemporaneously with the decision to discharge Shelangoski, the undersigned gives it the most weight when determining the primary reasons for Rexco discharged Shelangoski. It is more likely than not that Bottelman expressly included the reasons that factored most prominently in his decision to discharge Shelangoski in the termination letter that is dated the day on which he finalized Shelangoski's discharge. This decision will discuss each of the reasons individually as well as additional reasons Bottelman's discussed in his testimony at hearing and that he did not expressly mention in the discharge letter.

#### **IOWA SALES TAX FOR THE SECOND QUARTER OF 2019**

Rexco pays sales taxes in the State of Iowa. The Iowa Department of Revenue is the state agency that collects taxes. Rexco discharged Shelangoski in part because of notices the Iowa Department of Revenue sent to Bottelman and chairperson of the Rexco board, Rex Smith, regarding allegedly past due taxes.

On July 30, 2019, the penultimate day of the second calendar quarter of the year, Katie Powell, a Rexco employee under Shelangoski's immediate supervision made a payment to the Iowa Department of Revenue for the sales tax Rexco owed the state. Powell authorized payment to the Iowa Department of Revenue in the amount of \$71,124.00.

There was an issue with respect to the calculation of the sales tax Rexco owed. The Iowa Department of Revenue sent Rexco a notice of assessment dated October 8, 2019. The notice referenced the sales tax permit held by Rexco. It also stated Rexco owed \$39,030.88 in taxes, penalty, and interest for the second quarter of 2019. The notice included instructions, stating that Rexco could appeal the assessment, set up a payment plan, or pay the amount of the assessment. Shelangoski reviewed the sales taxes Rexco paid, discovered Powell and entered exemptions that were not saved, corrected the return, and submitted an additional payment. On January 14, 2020, Shelangoski authorized payment of \$24,617.43 for the sales tax Rexco owed in Iowa for the second quarter of 2019.

Nonetheless, the Iowa Department of Revenue sent a notice, dated January 15, 2020, to Rexco, Bottelman, and Smith regarding past-due tax obligations for Rexco. The notice to Rexco and Bottelman claimed Rexco owed \$39,688.69 in taxes, penalty, and interest. The notice also makes reference to the Rexco sales tax permit number. The notice states that if Rexco did not pay the past-due amount, the Iowa Department of Revenue "would begin the process of revoking [Rexco's] sales/use/excise tax permit on February 4, 2020."

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<sup>1</sup> The letter is dated "March 18, 2019," but the parties agree this is a typo.

Bottelman sent Shelangoski a text message with pictures of the notice he received. In their exchange, Shelangoski informed Bottelman he did not know why the Iowa Department of Revenue sent the notice. Bottelman called the Iowa Department of Revenue and left a message. He notified by Shelangoski by text message that he had done so and also shared:

This is a big deal to me. The fact that you have a notice and it has escalated to me really bothers me. It ruined part of my week last week knowing that I had a letter from Iowa [Department of Revenue] waiting for me when I got home.

Shelangoski determined there was an issue with Rexco's use tax from the second quarter of 2019 and paid the outstanding balance. However, the Iowa Department of Revenue informed Bottelman that the notice referenced unpaid sales tax from that quarter. Shelangoski believed the issue was addressed.

During their text message exchange, Bottelman asked what was causing the issue. Shelangoski responded, "As we have talked, I have way more than [I] can handle, [I] am not working all night anymore, some of the things [I] did have slipped."

On January 31, 2020, Shelangoski sent an email to Bottelman regarding tax issues. With respect to the Iowa sales tax issue, Shelangoski wrote:

As you know I missed the 2<sup>nd</sup> quarter of 2019, not sure how (bad time for me at that timeframe). They made up a bill of almost \$40k. Katie and I had the notice, knew they were incorrect, did some research but couldn't figure out what it was for. I should have reached out to our sales tax auditor and she could have helped up. [sic] The real bill was about \$1,200 and has been paid[.]

Rexco took no disciplinary action regarding the January 15, 2020 notice to Bottelman and Smith until citing the incident in its letter of termination dated March 19, 2020. It was not until Bottelman was going through Shelangoski's office to prepare for the temporary accounting help he had secured that he discovered the Iowa Department of Revenue notice to Rexco of January 15, 2020, which states that the company's sales tax permit could be revoked. Bottelman testified this was "shocking" to him because Rexco losing its sales tax permit would be a "company-ending event." He immediately notified the temporary accounting firm he had hired of the issue so they could act on it. Rexco then cited the unpaid taxes as a reason for Shelangoski's discharge.

## **SALES TAX LIABILITY IN OTHER STATES**

The Supreme Court of the United States considered how companies such as Rexco pay sales tax in *South Dakota v. Wayfair, Inc.*, 138 S.Ct. 2080 (2018). At issue in *Wayfair* was whether an entity's physical presence in a state is required for the entity to pay sales tax in that state. *Id.* at 2087. The Court held that its prior holdings in *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753 (1967) and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), which held that a physical presence was required for a state to collect sales taxes from entities that sell productions via catalogues and ship them into states, were no longer valid under principles of stare decisis. *Id.* at 2096–99. The Supreme Court concluded that the physical presence requirement for remitting sales tax does not apply and states are able to tax sales made by entities without a physical presence within their borders. *Id.* at 2099–2100.

The *Wayfair* holding fundamentally changed sales tax liability for entities such as Rexco. A group of states formed an interstate compact that would, in theory, make levying taxes easier

for the states and remitting payment easier for businesses. Rexco signed up to participate in the streamlined sales tax program.

Based on the thresholds in place for paying sales tax in a state, Rexco calculated it owed sales tax in Iowa, Nebraska, Illinois, and Missouri. However, ten states sent Rexco notices that the company owed sales taxes. Rexco cancelled its participation in the streamlined sales tax program because of the number of notices it received that Shelangoski believed were "fictitious."

In Shelangoski's January 31, 2020 email to Bottelman, he addresses the issue thusly:

Multiple states want us to pay imaginary sales tax based on the [*Wayfair*] case and that we signed up for the streamline sales tax program. We thought this would make it easier to pay the sales tax in the other states th[at] we could collect once over the \$100k. Instead states just sent us bills for imaginary am[oun]ts and want payment. We have been contacting and figuring out what needs to be done for each state. A couple of other states so far have not deactivated our sales tax number, so we continue to plug away.

Shelangoski further explained that, "Some of these issues have carried on because, in terms of Rexco, there was not a significant issue. What had been missed or filed wrong was done, if you wait 30 days or 200 days, the outcome will be the same for Rexco."

Shelangoski did not pay the amounts owed because he believed there was no basis for Rexco to pay them. Rexco took no disciplinary action against Shelangoski regarding the notices of sales taxes claimed due by other states until its discharge of Shelangoski. As of the time of hearing, Rexco had not been required to pay the amounts in the notices from the various states.

Rexco has received multiple notices from multiple states alleging it owes sales taxes in those states. One example is Wisconsin, which has threatened to place Rexco on a public list of delinquent tax payers. However, as of the time of hearing, there is no indication that Wisconsin had taken any negative action against Rexco regarding its alleged unpaid sales taxes.

#### **USE OF SMITH'S SIGNATURE STAMP**

Smith had a signature stamp made. He has an office at Rexco, but is not often in it. Smith gave Shelangoski his signature stamp so he could use it on documents when Smith was not in the office. Despite Smith giving Shelangoski the signature stamp, Rexco always has Smith sign documents. They do not use the signature stamp.

Rexco had decided to increase its line of credit. Smith agreed with the decision. Rexco needed to complete the paperwork.

Rexco has a line of credit at a bank. As part of the terms of the line of credit, Rexco must undergo an annual audit. The timing of the decision to increase its credit line meant that it was coming close to the deadline for it to be included as part of the audit.

Shelangoski used the signature stamp on the documentation to increase the line of credit. He informed the bank he had done so. The bank did not think it was an issue because of Shelangoski's plan to follow with documents signed by Smith.

Bottelman and Smith considered the use of stamp dishonest. Bottelman testified that Smith told him he did not give Shelangoski his signature stamp and they destroyed it. Smith did not testify.

### **KUBOTA ACCOUNT**

In January of 2019, Rexco ended its business relationship with Kubota. Rexco would no longer sell Kubota products. Under Iowa law, Kubota was required to buy back its products from Rexco.

Shelangoski was working with Kubota to close the account. However, because of other issues, Shelangoski put the matter on the back burner. Consequently, Rexco has experienced issues putting together a proper accounting of what Kubota owes it. As of the time of hearing, it is more likely than not that Kubota owes Rexco about \$17,000 that Rexco will not be able to collect due to its inability to show that this amount is in fact owed due to the passage of time.

### **OTHER ACTS**

In Bottelman's hearing testimony, he provided additional reasons not mentioned in the discharge letter. Bottelman testified that, in addition to the reasons listed in the termination letter, Rexco discharged Shelangoski because he paid former Rexco employees to help him perform duties relating to the financial management of the company. According to Bottelman's testimony, he discovered Shelangoski was paying these employees for help at the same time he discovered the unpaid taxes and the use of the signature stamp. Further, Bottelman testified he would not have authorized either of these employees to perform such work because he lacked confidence in both of their abilities to satisfactorily do so. Nonetheless, Bottelman did not include these decisions in the discharge letter.

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

This decision does not consider whether Rexco was in the right when it discharged Shelangoski. Rather, the question this decision answers is whether the reason or reasons for Rexco's decision to discharge Shelangoski disqualify him from unemployment insurance benefits under the Iowa Employment Security Law, Iowa Code chapter 96.

When the legislature created Iowa's unemployment insurance system, it codified a "guide for interpretation" for agencies such as Iowa Workforce Development and the Department of Inspections and Appeals, as well as the courts, in Iowa Code section 96.5(2), which states:

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this

measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

*Stare decisis* is a bedrock principle of American law that applies to the agency the same as Iowa courts. Consequently, Iowa Supreme Court precedent on the effect of section 96.2 when interpreting the statute controls in this appeal. The court has articulated the following standard when interpreting chapter 96:

We are to construe the provisions of that law liberally to carry out its humane and beneficial purpose. *Dirksen v. Employment Appeal Bd.*, 477 N.W.2d 381, 382 (Iowa 1991). Conversely, we are to interpret strictly the law's disqualification provisions, again with a view to further the purpose of the law. See *Diggs v. Employment Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa App.1991). The approach we take is faithful to the underlying purpose of the law and the principles we follow in interpreting it.

*Bridgestone/Firestone, Inc. v. Employment Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997).

The disqualification provision at issue here is Iowa Code section 96.5(2)(a), which dictates that an individual is disqualified from benefits if IWD finds that the employer discharged the individual for "misconduct in connection with the individual's employment." The legislature did not define "misconduct" in the statute. But the agency did in rule 871-24.32(1)(a), which states:

"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.

Over the years, the Iowa Supreme Court has consistently held the definition in this administrative rule accurately reflects the intent of the legislature. *E.g.*, *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Moreover, the court has held, "The definition of 'misconduct' in the administrative code focuses on whether the employee's conduct was deliberate, intentional, or culpable." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665-66 (Iowa 2000) (citing *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa App. 1986); *Savage v. Employment Appeal Bd.*, 529 N.W.2d 640, 642 (Iowa App. 1995); and *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218, 222 (Iowa 1984). "[W]hether misconduct has occurred requires proof the employee acted intentionally; a showing of mere negligence is not enough to constitute misconduct." *Id.* at 666.

Iowa Administrative Code rule 871-24.32(4) states:

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.

Under Iowa Administrative Code rule 871-24.32(8),

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.

Further, 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).

When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Rexco bears the burden to prove misconduct under the law. The backdrop of Shelangoski's actions is the reduction of employees to help him perform duties relating to Rexco finances. By the end of 2019, he was down two support staff, which is why he made the decision to bring back to former employees to help him get needed work done. Consequently, these decision will be addressed first.

Rexco offered no evidence regarding written company policies or procedures for hiring works or independent contractors. Nor did it provide any policies or procedures regarding granting contractor's access to Rexco systems. The evidence in the record shows that Shelangoski brought two employees back to help him keep his head above water with respect to Rexco finances. There is no indication that he intentionally acted against Rexco's interests; to the contrary, he was attempting to act in furtherance of Rexco's interests by getting help to get needed work done. And there is an insufficient basis in the evidence form which to conclude that Shelangoski had reason to believe he was not authorized to make this choice. Consequently, the decisions regarding hiring former employees as independent contractors and giving them access to Rexco systems so they could help him get work done does not constitute misconduct under Iowa law.

With respect to the Iowa sales tax issue, the record shows Shelangoski identified the issue and corrected it. After he did so, Bottelman and Smith received their notices. There is no indication that Shelangoski did anything wrong. To the contrary, a subordinate staff person made an error with the initial filing, Shelangoski reviewed the filing and corrected it, and there is no indication the timeline of events was detrimental to Rexco.

Moreover, to the extent Rexco contends it gave Shelangoski his final warning when it did the same to his subordinate, the evidence does not support such a conclusion. After finding out

there was an issue with the 2019 second quarter filing, Rexco took no corrective employment action against Shelangoski. This undermines the idea that Rexco communicated to Shelangoski that the tax-paying buck stopped with him and Rexco would discharge him for any more mistakes.

Then there is the sales tax issues created by the *Wayfair* decision, which turned the country's sales-tax collection upside down. Shelangoski took the position that Rexco would not pay what it did not owe and went through the monotonous and sometimes drawn-out process of working with state tax auditors to nail down what Rexco owed under the law and why.

And in his email explanation, Shelangoski explained that, in his experience, "if you wait 30 days or 200 days, the outcome will be the same for Rexco." This should have put Rexco on notice that at least some of Shelangoski's response to the state sales tax notices was delayed. Even so, Rexco took no action to investigate further or seek more information. But most importantly, Rexco presented no evidence that Shelangoski was wrong. Rexco did not present any evidence that it had sustained any harm by Shelangoski's approach to the various sales tax notices.

With respect to the Smith signature stamp, there is an insufficient basis in the evidence from which to conclude Shelangoski had evil designs. Smith did not testify. Bottelman testified with respect to what Smith's position is, but that is hearsay and therefore given less weight. In contrast, Shelangoski testified credibly that Smith gave him the stamp and he did not believe using it was an issue. There is not enough evidence in the record from which to conclude that Shelangoski knew or should have known that he was doing anything wrong; nor is there enough evidence from which to conclude that his actions were in fact wrong and could have harmed Rexco. After all, the company's lender saw no issue with what he did with the stamp.

Lastly, there is the Kubota account closure. The evidence shows that Shelangoski did not prioritize collecting the \$17,000 from Kubota. Instead, he prioritized other work such as the various state sales tax issues. There is no indication that Shelangoski deliberately failed to timely close the Kubota account in order to prevent Rexco from being able to collect money. Rather, Shelangoski made a good-faith decision with respect to prioritizing his work duties. To the extent it can be categorized as a mistake, it is at worst mere negligence. There is no evidence of the type of recurrence necessary to demonstrate that it equates to evil design or wrongful intent.

For these reasons, Rexco has failed to meet its burden to prove misconduct. The evidence establishes it is more likely than not that Rexco discharged Shelangoski for no disqualifying reason under Iowa Code section 96.5(2)(a) and rule 871-24.32(1)(a). Benefits are allowed, provided Shelangoski is otherwise eligible.

**DECISION:**

The July 16, 2020 (reference 01) unemployment insurance decision is reversed. Rexco discharged Shelangoski from employment for no disqualifying reason. Benefits are allowed, provided Shelangoski is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read "Ben Humphrey". The signature is stylized with a large, sweeping flourish at the end.

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Ben Humphrey  
Administrative Law Judge

November 3, 2020  
Decision Dated and Mailed

bh/mh