

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Aleksandra Borkowska

Heard on: Thursday, 14 March 2019, and Wednesday, 23 October
2019

Location: ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N
6AU (14 March 2019);
The Chartered Institute of Arbitrators, 12 Bloomsbury Square,
London, WC1A 2LP (23 October 2019)

Committee: Mrs Judith Way (Chairman)
Mr Peter Douglas (Accountant)
Mr Jonathan Broad (Lay)

Legal Adviser: Mr Mark Ruffell (Legal Adviser)

Persons present

and capacity: Mrs Emily Healy-Howell (ACCA Case Presenter, 14 March
2019) Ms Helen Easterbrook (ACCA Case Presenter, 23
October 2019)
Mr Christopher Badoo (Hearings Officer, 14 March 2019)
Ms Anna Packowska (Hearings Officer, 23 October 2019)
Miss Aleksandra Borkowska (Student)
Mr Christopher Cope (Representing Miss Borkowska)

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Observers: Mrs Saira Ali (ACCA, attended on 14 March 2019)

Summary: **Allegation 1(a) proved**

Allegation 1(b) proved

Allegation 1(c)(i) in relation to allegation 1(a) proved

Allegation 1(c)(i) in relation to 1(b) not proved

Allegation 1(c)(ii) in relation to allegations 1(a) and 1(b) proved

Allegation 1(d)(i) in relation to allegations 1(a), 1(b) and 1(c) proved

Allegation 1(d)(ii) in relation to allegations 1(a), 1(b) and 1(c) proved

Sanction: Severe Reprimand

Costs to ACCA: £9,000

PRELIMINARY APPLICATIONS

1. The Committee had read and considered the service bundle, pages 1-19, and the case papers, pages A-N and 1-172, and additional bundle pages 181-186.

ALLEGATION

Allegation 1

It is alleged that Miss Aleksandra Borkowska:

- (a) On 19 April 2016, sent an email to Colleague A confirming that she had passed the two exams as set out in Schedule 1 when, in fact, she had not.

(b) Between 19 May 2016 and 6 October 2017, registered her training supervisor as 'Mr Alex Borko', 'male', 'date of birth 25/08/1985' and primary email address as [PRIVATE].

(c) Miss Aleksandra Borkowska's conduct in respect of 1(a) and/or 1(b) above was:

(i) Dishonest, in that she presented information which was false with the intention of misleading the recipient;

(ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2016 and 2017).

(d) By reason of her conduct, Miss Aleksandra Borkowska is:

(i) Guilty of misconduct pursuant to bye-law 8(a)(i) in respect of any or all of the matters set out at 1(a)–1(c) above;

(ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of 1(a)–1(d) above.

BRIEF BACKGROUND

2. Miss Aleksandra Borkowska first registered as a student on 26 August 2009. Miss Borkowska was employed as a junior management accountant from November 2011 until November 2017, with the Commonwealth War Graves Commission (CWGC). On 19 April 2016, Miss Borkowska sent an email from her work email address to Colleague A, Director of resources at CWGC, confirming that she had passed two examinations, when in fact, she had not. Miss Borkowska was absent for her P1 paper, and she received a 'fail' for her F7 paper in March 2016.
3. The second allegation made against Miss Borkowska is that she registered herself as her own training supervisor in an attempt to mislead ACCA as to

the identity of the individual. She registered 'Mr Alex Borko as her practical experience supervisor (PES), which appears to be a shortened version of her own name, and kept her work email address as the contact email for her training supervisor. She has also registered this 'identity' as a male with a different date of birth to her own.

4. As a result of the serious allegations made against Miss Borkowska, ACCA wrote her an initial letter dated 20 March 2018, to ask for her response. ACCA received a response from Mr Chris Cope, Miss Borkowska's representative on 9 April 2018. Mr Cope confirmed that Miss Borkowska was employed by the CWGC from 2009 as a junior management accountant, until November 2016 when she resigned from her position. Miss Borkowska had been undergoing a stressful time in her personal life, and was worried about her position at work. She accepted submitting the email. She regretted what she had done. In relation to Allegation 1(b), the purpose of entering a false PES was simply to test out that she was carrying out the exercise correctly. It did not occur to Miss Borkowska that by nominating herself, as a test exercise, she was effectively arranging for ACCA to register herself, formally, as the PES.
5. Miss Borkowska completed a Case Management Form on 22 October 2018, and subsequently made a witness statement dated 2 January 2019. She admitted acting dishonestly in relation to Allegation 1(a) but denied dishonesty or any intention to mislead in relation to Allegation 1(b). She admitted that she breached the Fundamental Principle of Integrity in relation to Allegation 1(c).
6. At the hearing, Miss Borkowska admitted Allegation 1(a), and denied Allegation 1(b). In relation to Allegation 1(c), Miss Borkowska admitted dishonesty in relation to Allegation 1(a). In relation to 1(c), she denied dishonesty and breaching the Fundamental Principle of Integrity in relation to 1(b). She accepted that in relation to Allegation 1(a), her conduct amounted to misconduct, and a liability to disciplinary action and admitted Allegation 1(d)(i), and 1(d)(ii) in relation to Allegation 1(a), and 1(c)(i) only.

Mr Cope clarified that the dispute over 1(b) was whether the names were registered with ACCA.

EVIDENCE GIVEN BY MISS BORKOWSKA

7. Miss Borkowska gave evidence, and stated that she had joined CWGC in 2011 and began sitting examinations in 2012. She had sat all the P examination papers, and was awaiting the result from the last one she had sat. She wanted to test the system in May 2016, for no specific reason but to see how the system worked. She deleted the supervisor nomination in May 2016 straightaway. She did not put her work colleague as the PES in May 2016, as she had not written her objectives. In May 2016, she did not give her gender or date of birth. She used her work email address. In October 2017, she tested the system again more thoroughly. She had put a shorter version of her name, and left it as male as a drop down menu. She chose a random date. She did not register her work colleague in October 2017. She had worked for her work colleague for 5 years by 2017. She stated that she disabled the account on the same day in 2017, but was unable to delete the account. On both occasions, Miss Borkowska did not think that she had registered the names as her supervisor. She had believed that she could have as many supervisors as she liked, and she did not need to use them.
8. Miss Borkowska stated that she was embarrassed about sending the email on 19 April 2016, and accepted that it was a lie. She had no other disciplinary matters recorded against her. In cross-examination, Miss Borkowska stated that she had felt pressurised in April 2016, but not nervous about appointing her work colleague as a supervisor. She had wanted to see how the process of appointing a supervisor worked. She had no other specific reason for testing the system.
9. Person A gave evidence in accordance with his witness statement. He was not cross-examined.

SUBMISSIONS ON ALLEGATIONS

10. Ms Healy-Howell submitted, on behalf of ACCA, that the reason that Miss Borkowska sent the email confirming that she had passed examinations when she had not was because she wanted to mislead her work colleague. Ms Healy-Howell submitted, in relation to Allegation 1(b), that Miss Borkowska, between the 19 May 2016 and 6 October 2017, was registering herself as a supervisor. As a consequence, ACCA placed reliance on this information. She submitted that the assertion by Miss Borkowska that this was 'a test' did not make any sense, as there was no need to test the system. She submitted that that this was a clear attempt to deliberately mislead ACCA, which was dishonest and lacked integrity.
11. Mr Cope, on behalf of Miss Borkowska, submitted that because she had used her work email address, it would have been clear to ACCA that it was her who was involved. He submitted that it would have been absurd for a student to have registered themselves as PES. He stated that no one from ACCA had claimed to have been misled. He questioned whether, if she had intended to mislead, then why did she use an address that came back to her. Mr Cope submitted that there was no motive for her to mislead ACCA.

DECISION ON ALLEGATIONS AND REASONS

12. In the light of the admissions made to Allegations 1(a), and 1(c)(i) in relation to 1(a), the Committee found Allegations 1(a), and 1(c)(i) in relation to Allegation 1(a) proved.
13. The Committee noted that Miss Borkowska admitted that she had acted dishonestly by submitting an untrue email to her colleague, and that she admitted in the Case Management Form that it breached the Fundamental Principle of Integrity. The Committee noted that section 110.1 of the Code of Ethics and Conduct stated *'The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional relationships. Integrity also implies fair dealing and*

truthfulness.' The Committee determined that, in the light of its finding on section 1(c)(i) in relation to dishonesty, it found that Allegation 1(c)(ii) as it relates to Allegation 1(a) proved.

14. The Committee considered that a finding of dishonesty in relation to Allegation 1(a) was a fundamental departure from the standard of conduct expected of a student member. The Committee found Allegations 1(d)(i), and 1(d)(ii) in relation to Allegation 1(a) proved.
15. The Committee noted that in May 2016, Miss Borkowska '*went on to the... ACCA website online to register for a supervisor just to test the system...*'. In October 2017, Miss Borkowska made a further application, and subsequently received an email that thanked her for registering. The Committee were satisfied that Miss Borkowska registered the following details with ACCA '*Mr Alex Borko*', '*male*', '*date of birth 25/08/1985*' and primary email address as [PRIVATE]' Therefore, the Committee were satisfied that Allegation 1(b) was proved.
16. The Committee noted that Miss Borkowska did not dispute that she had submitted false details. She had stated that she had done it to test the system, but could not elaborate on her reasoning for doing it. Miss Borkowska stated that she had intended to delete the false details, but was unable to do so. ACCA did not call any evidence to contradict Miss Borkowska's evidence that she was unable to delete the details straightaway due to the way that the system operated. The Committee considered that Miss Borkowska's account appeared inconsistent, in that she was testing the system at a time when she was considering writing her objectives, yet 34 months after this had first occurred, she had still not written her objectives. However, the Committee considered that it was unclear as to what alternative explanation there would be, other than that provided by Miss Borkowska, for her to enter false details. Therefore, the Committee considered that there was insufficient evidence to find that Miss Borkowska had intended to mislead ACCA, and Allegation 1(c)(i) in relation to Allegation 1(b) was not proved.

17. The Committee considered whether entering false details breached the Fundamental Principle of Integrity. The Committee determined that if Miss Borkowska entered the details as a test, then she was still entering materially false information that could mislead anyone who happened to subsequently read it. As a consequence, the Committee found Allegation 1(c)(ii) proved in relation to Allegation 1(b) proved.
18. The Committee considered that as the submission of the details in 1(b) was contrary to the Fundamental Principle of Integrity, in its judgement, this was serious as it created a false record on a regulatory record. As a consequence, it amounted to misconduct.
19. The Committee considered that Allegation 1(d)(ii) was proved in relation to its findings on 1(a), 1(b), and 1(c).

SUBMISSIONS ON SANCTION

20. Ms Easterbrook, on behalf of ACCA, submitted that Miss Borkowska had no previous regulatory history.
21. Mr Cope explained that Miss Borkowska had struggled with the syllabus and examinations, and was under pressure by her employer to sit the examinations. When she failed the examinations, she lied to her employer saying that she had passed when she had not done so. She immediately regretted what she had done. There was no change in her employment position, and the continuance of her employment was not dependent on her passing ACCA examinations. Mr Cope submitted that Miss Borkowska should be given credit for making admissions in relation to the Allegations. In addition, Miss Borkowska repaid examination fees paid by her previous employer.
22. Mr Cope explained that at the time that the email was sent, Miss Borkowska and her partner were under a severe amount of stress [PRIVATE]. Mr Cope

asked the Committee to note that in July 2017, Miss Borkowska had told her employer that she had not passed a later examination.

23. In relation to Allegation 1(b), Mr Cope submitted that Miss Borkowska did not intend to mislead ACCA, and ACCA had not been misled by her.
24. Mr Cope stated that Miss Borkowska had now passed all of her examinations apart from one, and was keen to complete her examinations to become a full member of ACCA. Miss Borkowska worked as a management accountant. Mr Cope referred to the references that had been submitted.
25. Mr Cope submitted that the Committee should consider a sanction of a severe reprimand. He submitted that Miss Borkowska's actions were reckless, and not intentional, that she had shown insight, expressed regret, had a previous good record, there were two isolated and unlinked incidents, no likely reoccurrence, there were relevant references, and Miss Borkowska had co-operated during the investigation stage.
26. Mr Cope asked the Committee to take into account the delay between the complaint in 2016, the reporting of the complaint at the end of 2017, and the dates of the hearings. The delays had caused Miss Borkowska considerable stress.

SANCTION AND REASONS

27. The Committee accepted the advice of the Legal Adviser, and had regard to the Guidance for Disciplinary Sanctions. The Committee considered that there were two occasions where Miss Borkowska's integrity had been called into question, which were related to her qualification. The Committee noted that Miss Borkowska had demonstrated insight by admitting her dishonesty in relation to Allegation 1(a) to the Committee. She had also no previous regulatory history. The Committee accepted that Miss Borkowska had been under a considerable amount of stress at the time that the email was sent.

The Committee also noted that there were two positive character references that were supportive of her, and spoke to her honesty over many years.

28. The Committee considered that taking no further action, an admonishment and a reprimand were insufficient sanctions given the seriousness of the case.
29. The Committee considered whether a severe reprimand was an appropriate sanction. The Committee considered that the conduct in relation to Allegation 1(a) was intentional, as Miss Borkowska knew that she was lying about passing two examinations when in fact she had failed one, and not sat the other. However, the Committee considered that Miss Borkowska had demonstrated insight since her misconduct was discovered. Given the delays in the proceedings, it was clear that Miss Borkowska had had plenty of time to consider the effect of her actions. The Committee noted that Miss Borkowska had tried, and succeeded in passing examinations since the misconduct.
30. The Committee considered that telling a lie to an employer, particularly if it related to the employee's professional qualification was a serious matter. However, the Committee considered that the lie itself was stupid, and did not appear to have advanced Miss Borkowska's career. There was a likelihood, even an inevitability, that her lie would have been discovered. In the Committee's view, the lie was told for a short term gain in order to appease her employer against a background of severe stress in her personal life which clouded her judgement at the time. The lie did not demonstrate any underlying trait of dishonesty, and there was no suggestion that there would be a likelihood of repetition. Therefore, the Committee considered that the circumstances surrounding this isolated incident of dishonesty meant that an exceptional course could be taken. In reaching this conclusion, the Committee had considered the reputation of the profession, and whether Miss Borkowska posed a future risk to the public. The Committee considered that, on balance, Miss Borkowska ought not to be excluded from the student register.

31. The Committee determined that the appropriate sanction was a severe reprimand.

COSTS AND REASONS

32. ACCA applied for costs in the sum of £11,301.98. Mr Cope produced a detailed statement of Miss Borkowska's accounts and bank statements. He submitted that she would have difficulty paying the sums requested. Mr Cope submitted that Miss Borkowska had paid £3,630 in costs for a hearing in January 2019, where evidence had successfully been excluded. He submitted that the Committee should exercise its discretion in Miss Borkowska's favour.

33. The Committee accepted the advice of the Legal Adviser. The Committee considered that it was perfectly proper for ACCA to apply for its costs. However, the Committee accepted that Miss Borkowska had some constrained finances, but she had the ability to alter her expenditure, and had assets. The Committee considered that it was appropriate to reduce the costs applied for as result of the outcome of the hearing in January 2019, and delays caused by a lack of documentation in the hearing on 23 March 2019, and the reduced time for the hearing on 23 October 2019. The Committee determined that an appropriate order for costs was £9,000.

EFFECTIVE DATE OF ORDER

34. The Committee directed that the order should take effect at the expiry of the appeal period referred to in the Appeal regulations.

Mrs Judith Way
Chairman
23 October 2019