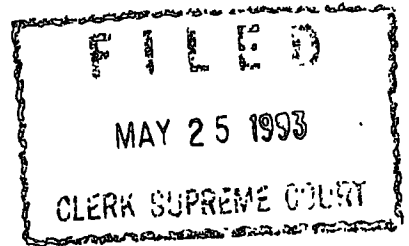


IN THE COURT OF APPEALS OF IOWA

No. 3-196 / 92-1403



ROBERT L. MORTON,
Petitioner-Appellant,

vs.

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RATIGAN MOTOR CENTER, INC.,
and EMPLOYMENT APPEAL BOARD,
Respondents-Appellees.

Appeal from the Iowa District Court for Harrison
County, Glenn McGee, Judge.

The petitioner appeals from the district court's
decision on judicial review affirming the employment appeal
board's decision determining the petitioner was
disqualified from receiving unemployment benefits.

AFFIRMED.

Luke Cosgrove of Legal Services Corporation of Iowa,
Council Bluffs, for appellant.

Joe E. Smith, Employment Appeal Board, for appellees.

Heard by Schlegel, P.J., and Sackett, J., and Keefe,
S.J.*

*Senior judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

SACKETT, J. 000436

Petitioner-appellant Robert L. Morton appeals the decision of the district court affirming respondent-appellee's Employment Appeal Board's decision denying him unemployment compensation and determining he was overpaid unemployment compensation benefits. We affirm.

Morton, a sales person for respondent-appellee Ratigan Motor Center, Inc., was denied unemployment compensation because he was late for work on Wednesday, October 2, 1991, and absent without permission on Friday, October 4, 1991.

Morton contends there is not substantial evidence his tardy and absence were not excused and, even if they were not, they do not support a finding of misconduct.

Ratigan Motor was holding a special four-day promotion and required all sale staff employees to work from 8:00 a.m. to 3:30 p.m. on Wednesday, October 2, 1991, through Saturday, October 5, 1991. Ratigan Motor said all employees had been informed at a sales meeting of the special promotion and their requirement the sales staff work extra hours.

On Tuesday, October 1, 1991, Morton asked his supervisor if he could have Friday, October 4, off to go to a doctor appointment. Morton had scheduled the appointment on that day because he normally did not work Fridays. Morton's supervisor told him to see if he could get his appointment changed or to ask the general manager for approval.

Morton normally was scheduled to start work on Wednesdays at twelve o'clock noon. On October 2, Morton arrived at twelve o'clock noon for work. His supervisor talked to him about his late arrival. Morton told his supervisor he had not been told about the early start. Morton's supervisor gave Morton a warning about his late arrival.

Morton did not come to work on Friday, October 4.

Morton came to work on Saturday, October 5, and he was discharged because of the two unexcused absences. Morton applied for unemployment benefits. The Employment Appeal Board determined Morton's unexcused absences constituted misconduct and, therefore, unemployment benefits were denied.

Morton filed a petition for judicial review contending the Board's decision was not supported by substantial evidence. The district court affirmed the Board's decision. This appeal follows.

Our review of the district court's decision is limited to corrections of errors at law. *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218, 221 (Iowa 1984). The decision of the agency is final if supported by substantial evidence. See *Heatherly v. Iowa Dep't of Job Serv.*, 397 N.W.2d 670 (Iowa 1987). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 734 (Iowa App. 1986). When the facts in an

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unemployment compensation case are in dispute or when reasonable minds may differ on the inference to be drawn from evidence, the agency's findings are conclusive. *Flesher v. Iowa Dep't of Job Serv.*, 372 N.W.2d 230, 234 (Iowa 1985).

Morton contends there is not substantial evidence to support the Board's decision. Morton said he first heard about the extra hours on Tuesday and he went to work at noon on Wednesday. Morton also admits he did not try and change his appointment or get the general manager's approval for taking Friday off, and he did not go to work on Friday.

There was evidence this was a special four-day sales promotion and that all sales staff employees were required to work extra hours. There is substantial evidence to support the agency's finding Morton knew about the major sales event scheduled for October 2 through October 5, and the need to work from 8:00 a.m. to 3:30 p.m. on those days and that Morton was warned about his October 2 absence. There is also substantial evidence to support the agency's finding Morton was healthy enough to work on October 5, and he did not return to work after his morning doctor's appointment.

The next question we need address is whether the two unexcused absences are substantial evidence of misconduct. In assessing this issue, we consider the warning Morton received after the first absence and the fact the absence

occurred during a critical time to the company, a well advertised, substantial sales promotion.

We affirm.

AFFIRMED.