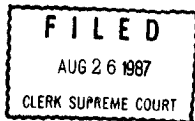


IN THE COURT OF APPEALS OF IOWA



DONALD L. AYERSMAN,)

Petitioner-Appellant,)

Filed August 26, 1987

vs.)

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IOWA DEPARTMENT OF JOB SERVICE)

n/k/a IOWA DEPARTMENT OF)

EMPLOYMENT SERVICES and)

HERITAGE COMMUNICATIONS, INC.,)

Respondent-Appellees. .

7-192
86-1771

Appeal from the Iowa District Court for Polk County (A.A. 1044), Harry Perkins, Judge.

Petitioner appeals a district court decision which upheld the findings and conclusions of the Iowa Department of Job Service denying him unemployment benefits. **REVERSED AND REMANDED.**

Carolyn F. Coleman and Donna J. Henderson of the Legal Aid Society of Polk County, Des Moines, for appellant.

William C. Whitten and Blair H. Dewey for the Employment Appeal Board, Des Moines, for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

The petitioner appeals a district court decision which upheld the findings and conclusions of the Iowa Department of Job Service denying him unemployment benefits. We reverse and remand.

The petitioner, Donald L. Ayersman, was discharged because he consumed alcohol while on the job. Ayersman does not deny that he consumed the alcohol, rather, he contends that at the time of his employment he could not control his urge to drink. He asserts that since misconduct connotes volition and his conduct was not volitional, he should not be denied unemployment benefits on the grounds that he was discharged for misconduct. Respondents assert that there is substantial evidence in the record to support the district court's finding that Ayersman's behavior was voluntary.

Our scope of review for cases arising out of the Iowa Administrative Procedure Act is limited to the correction of errors of law. Iowa Code § 17A 20 (1987). In order to uphold the Department of Employment Service's decision such decision must be supported by substantial evidence on the record when viewed as a whole. Ray v. Iowa Department of Job Service, 398 N.W.2d 191, 193 (Iowa App. 1986). Evidence is substantial to support an agency's decision if a reasonable person would find it adequate to reach the given conclusion Meads v. Iowa Department of Social Service, 366 N.W.2d 555, 558 (Iowa 1985). Though two inconsistent conclusions may be drawn from the record, such a possibility does not prevent the agency's finding from being supported by substantial evidence. Contract Services, Ltd. v. Iowa Department of Job Service, 372 N.W.2d 212, 215-16 (Iowa 1985).

Under Iowa Code section 96.5(2)(a) (1985), an individual may be disqualified for unemployment benefits if that individual is discharged for misconduct. The administrative rule defining misconduct reflects legislative intent. Huntoon

v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979), cert. denied, 444 U.S. 852, 100 S. Ct. 105, 62 L. Ed. 2d 68 (1979). In 370 Iowa Administrative Code section 4.32(8), misconduct is limited to willful or wanton conduct which evidences disregard of standards of behavior which the employer has the right to expect or to intentional and substantial disregard of the employer's interests

The only issue before us is whether the evidence presented to the agency was substantial enough that a reasonable person could have concluded that Ayersman's drinking was voluntary. Ayersman cites Huntoon for the proposition that drinking on the job may not constitute misconduct if such behavior was not volitional. Id. at 448. In Huntoon, the supreme court, in addressing the relationship between alcoholism and voluntary acts which might constitute misconduct, said "The question is not whether the alcoholism was voluntary but whether the conduct resulting in discharge was voluntary." Id. It is only when the impairment is sufficient to deprive the individual of the ability to abstain from the intoxication-caused work lapse that the individual will not be disqualified for misconduct. Id.

While Huntoon stands for the proposition that if one's impairment from alcoholism is sufficient to deprive an individual of the ability to abstain from an intoxication-caused work lapse, disqualification does not result, factually, this case presents a different problem. Mr. Huntoon, the chief deputy sheriff took some prisoners out for a drinking party, and because of his alcoholism, claimed he couldn't avoid drinking, causing him to become intoxicated, and causing him to neglect taking the prisoners back to jail. He was discharged for the act of misconduct resulting from his intoxication. In this case, however, Ayersman was discharged for consuming alcohol while on the job, for which he had been warned. His claim is that he was compelled to drink, by reason of his alcoholism, in order to function in his job.

Ayersman testified in his own behalf before the hearing officer. His testimony established that he was compelled to drink, in order to be able to function in his employment. He testified that upon being discharged, he had feelings of a lack of self-worth, and instead of going home, went to an AA facility, where he talked to some people who helped him to commence overcoming his disease of alcoholism.

An expert in the field of alcoholism appeared and testified concerning the disease of alcoholism, and related the compulsion which caused Ayersman to drink on the job. He supported the evidence given by Ayersman that Ayersman "could not-not drink," and that his drinking was because of the compulsion of his disease. The hearing officer made the following finding:

The claimant's alcohol problem includes compulsive drinking.
(Emphasis added.)

The following finding of the hearing officer was deleted by the appeal board:

On the day of his discharge, the claimant checked into an alcohol treatment facility and since that time has generally refrained from the consumption of alcohol.

For the department to find that the claimant's alcohol problem included compulsive drinking, and then to proceed to the finding that his drinking was volitional, is wholly inconsistent. There is evidence to support a finding that claimant was a compulsive drinker. There is no evidence in the record to support the conclusion that his drinking was subject to his voluntary control, so as to make it volitional, and hence, misconduct. The hearing officer points to the claimant's having "checked into an alcohol treatment facility" on the day of his discharge, as indicating that he could stop drinking if he wanted to do so. The fact that he went to an AA facility the night he was terminated, and the statement that he had thereafter almost completely refrained from drinking,

does not support the finding that his drinking was volitional, in view of the record of this case.

There is no question but that Ayersman drank on the job, after being warned about such conduct. It is undisputed that he was discharged for drinking on the job, and not for committing some other act of misconduct while under the influence of alcohol, as was alleged in Huntoon. See id. The only issue here is whether that drinking on the job was a volitional act. As stated by the hearing officer, "[T]he issue to be determined is whether the claimant's alcohol problem, including his compulsion to drink, is sufficient to exculpate him from the consequences of his actions." (Emphasis added.) Having made a finding that claimant suffers from a compulsion to drink (for which substantial evidence appears in the record), it cannot be found (when there is no sufficient evidence in the record to support such a finding) that his compulsive drinking was volitional, and therefore misconduct.

We reverse the decision of the trial court and the agency in denying benefits to Ayersman, and remand to the agency for the payment of benefits as prescribed by law.

REVERSED AND REMANDED.