

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 26 1984

CLERK SUPREME COURT

TRAVIS VOSHELL,

)

Filed June 26, 1984

584

Petitioner-Appellant,

)

vs.

)

4-119
83-1220

**IOWA DEPARTMENT OF JOB SERVICE
and SCHULZ CONSTRUCTION CO., INC.,**

)

)

Respondents-Appellees.

Appeal from the Iowa District Court for Fayette County-Carroll E.
Engelkes, Judge.

The petitioner sought judicial review of an agency action denying unemployment benefits. The district court affirmed the agency's decision, and the petitioner has appealed. **AFFIRMED.**

John Lansing Brown of the Legal Services Corp of Iowa, for petitioner-appellant.

Joseph L. Bervid, Walter F. Maley, and Blair H. Dewey, Des Moines, for respondents-appellees.

Heard by Oxberger, C.J., and Hayden, and Schlegel, JJ., but considered en banc.

HAYDEN, J.

The petitioner sought judicial review of an agency action denying him unemployment benefits. The district court affirmed the agency's decision, and the petitioner has appealed. The petitioner contends the agency and the district court committed an error of law by interpreting the term "misconduct" in such a way as to include the conduct for which the petitioner was fired (disobeying an order to move his car from a parking lot adjacent to the work site). He also contends there was not substantial evidence to support the decision that his discharge had been justified. We affirm.

I. Scope of Review

We note that the district court, when exercising the power of judicial review conferred by section 17A.19 of the Iowa Code, is itself functioning in an appellate capacity to correct errors of law, as specified in section 17A.19(8). Peoples Memorial Hospital v. Iowa Civil Rights Commission, 322 N.W.2d 87, 91 (Iowa 1982). Thus, when this court reviews a decision of a district court rendered pursuant to section 17A.19, the sole question is whether the district court correctly applied the law. Id. In order to make that determination this court applies the standards of section 17A.19(8) to the agency decision to determine whether this court's conclusions are the same as those of the district court. Id. We are bound by the agency's findings of fact if they are supported by substantial evidence. Evidence is substantial if a reasonable mind could accept it as sufficient to reach the same findings. The fact that a different conclusion could also have been reached is irrelevant. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269, 270 (Iowa 1982). Therefore, our review is not de novo. On appeal from the district court's decision affirming the denial of unemployment benefits, our review is limited to a determination of whether the district court made errors of law when it exercised its power of review of the agency action. Woods v. Iowa Department of Job Service, 315 N.W.2d 838, 840 (Iowa Ct. App. 1981).

II. Misconduct

Iowa Code section 96.5(2) provides that a claimant is disqualified from unemployment benefits if the department finds that the individual has been discharged for misconduct in connection with the individual's employment. Budding v. Iowa Dept. of Job Service, 337 N.W.2d 219, 221 (Iowa Ct. App. 1983).

The Department of Job Service has defined misconduct 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.

370 Iowa Administrative Code § 4.32(1). In order to support a disqualification from unemployment benefits, the misconduct must be substantial. Budding at 222. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits. Id.

The facts in this case are disputed. The employer testified that the company had a written policy of not allowing employees to park on a job site unless their vehicles were carrying tools or materials. The employer produced a document entitled "Employee Bulletin" dated January 15, 1982, which lists ten items of concern to employees. Item 10 provides:

Concerning parking vehicles at the job site—those employees NOT carrying tools or materials, park away from property to allow material trucks and sub-contractors adequate access to the job. It is the FORMAN'S (sic) JOB to keep site from being congested of needless vehicles.

On March 18, 1982, claimant's car was damaged while parked on a job site when a trailer rolled into it. The employer testified that claimant was warned at that time not to park his car on the job site. On March 22 claimant once again parked on the job site. His foreman repeatedly told him to move his car. When claimant refused his employment was terminated.

Claimant testified that he was not aware of any company policy regarding parking of vehicles on the job site and had never been warned not to park there. He admits that his car was damaged on March 18 on the job site and he admits refusing to remove his car from the job site on March 22. Although the foreman requested more than once that claimant move his car, claimant testified that he told the foreman he would not comply because the request was not "work related." Claimant testified that the only tools he ever carried were the ones on his workbelt whereas some of the other employees carried larger equipment in their vehicles. Claimant stated that the employees did not need those tools at this particular job site, however.

Three other employees testified. None of them was familiar with the company policy against parking on a job site. Two of them, Hoppenworth and Mortenson, had parked near claimant's car on March 22 and had not been told to move their vehicles. Martenson testified that he carried his toolbox in his car but could not remember if he had used it on March 22. Hoppenworth testified that he regularly carried his own tools and company tools in his truck. However, all of the tools had been unloaded at the job site several days prior to March 22.

In Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa Ct. App. 1983), we held that an employee's one-time reference to his supervisor as a "dirty bitch" did not display a "willful or wanton disregard of an employer's interest" under the definition of misconduct set forth in 370 Iowa Administrative Code section 4.32(1). In arriving at that conclusion this court stated:

Petitioner did not refuse to obey any directives given to him by his supervisor. His admittedly caustic comment was not made in the course of an argument with her, and did not serve to undermine her authority. It was an isolated incident of relatively minor import.

Id. at 223. In contrast, the claimant in the present case did refuse to obey a directive from his supervisor. While the derogatory comment in Budding was improvidently uttered once, claimant-Voshell's repeated refusal to obey his supervisor even after being warned that his car would be towed away can only be characterized as willful.

In Green v. Iowa Department of Job Service, 299 N.W.2d 651, 655-56 (Iowa 1980), the supreme court held that an employee's refusal to sign a written warning after being told by her supervisor to do so constituted misconduct as a matter of law. Although a refusal to obey a supervisor may be justified in some instances, see Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa Ct. App. 1982) (employee not guilty of misconduct for refusing to pick up mail from a department where she had been repeatedly subjected to racial harassment), in this case there was no evidence that the foreman's request would physically endanger or be emotionally or psychologically offensive to claimant. Absent some such extraordinary situation, an employer has the right to expect an employee to do what he is directed to do. Claimant, therefore, deliberately violated the "standards of behavior which the employer has the right to expect of employees." See 370 Iowa Administrative Code § 4.32(1). His deliberate refusal to move his car cannot be said to have resulted from inability or incapacity; it was not inadvertent or negligently done; nor was it a good faith error in judgment.

Therefore, the district court did not err in finding that petitioner was guilty of misconduct.

AFFIRMED.