IN THE COURT OF APPEALS OF IOWA

No. 7-077 / 96-361

FILED
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CLERK SUPREME COURT

PAMELA A. BUSHMAN,
Appellant,

vs.

EMPLOYMENT APPEAL BOARD and **MERCY CARE MANAGEMENT CO.,**
Appellees.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

The petitioner appeals the district court's ruling on judicial review affirming the respondent board's decision determining that the petitioner engaged in misconduct disqualifying her from receiving unemployment benefits. **AFFIRMED.**

John B. Whiston, and Megan Brown, Ramon Carrasco, and Jade C. Havermann, Student Legal Interns, Iowa City, for appellant.

David A. Elderkin of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee employer.

William Whitten and Anita Garrison, Des Moines, for appellee board.

Heard by Sackett, P.J., and Cady and Vogel, JJ.

VOGEL, J.

Pamela Bushman's claim for unemployment benefits was denied by a Job Service representative for engaging in substantial misconduct by harassing her co-workers. On Bushman's appeal, an administrative law judge ("ALJ") determined Bushman had not engaged in misconduct. Bushman's employer, Mercy Care Management Company, appealed the decision to the respondent Employment Appeal Board ("EAB"), which reversed the ALJ's decision. The Board determined Bushman did engage in misconduct disqualifying her from receiving unemployment benefits. The district court affirmed the decision of the EAB and Bushman appeals.

Scope of review. Our review of cases under the Iowa Administrative Procedures Act, Iowa Code section 17A, are at law. *UNI-United Faculty v. PERB*, 545 N.W.2d 274, 278 (Iowa 1996); *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230, 231-32 (Iowa App. 1990); *Jackson County Pub. Hosp. v. Public Employment Relations Bd.*, 280 N.W.2d 426, 429 (Iowa 1979).

The Court of Appeals, like the district court, is bound by the final agency's fact-findings if those findings are supported by substantial evidence; evidence is substantial if a reasonable person would find it adequate for reaching a decision. *Fairfield Toyota, Inc. v. Bruegge*, 449 N.W.2d 395, 397 (Iowa App. 1989) (citing *Peoples Memorial Hosp. v. Iowa Civil Rights Comm'n*, 322 N.W.2d 87, 91 (Iowa 1982)). We are not free to interfere with an agency's findings where there is a conflict in evidence or when reasonable minds might disagree about inferences to be

drawn from the evidence, whether disputed or not. *Norland v. Iowa Dep't of Job Serv.*, 412 N.W.2d 904, 908 (Iowa 1987).

Misconduct. Iowa Code section 96.5(2) (1995) states a claimant is disqualified for unemployment benefits "[i]f the department finds that the individual has been discharged for misconduct in connection with the individual's employment." *Id.*; *Fairfield*, 449 N.W.2d at 397-98. Willful misconduct supporting a denial of unemployment benefits can be established if an employee manifests an intent to disobey reasonable instructions of the employer. *See Pierce v. Department of Job Serv.*, 425 N.W.2d 679, 680 (Iowa App. 1988). Further, misconduct, pursuant to 345 Iowa Administration Code 4.32(1) must be substantial in nature to support a disqualification from unemployment benefits. *Fairfield*, 449 N.W.2d at 398.

Bushman thought she saw a pattern of racial discrimination at Mercy. After discussing her concerns with the Iowa Civil Rights Commission, she began contacting co-workers regarding her perception of racism at Mercy. Bushman apparently felt she could not go to her supervisors because they were responsible for the situation. Although Bushman claims that she did not harass the employees, several employees told Mercy supervisors they felt intimidated by Bushman. In response, the supervisors requested Bushman discuss her concerns with management. Apparently, Bushman felt she could not and continued to contact employees.

On August 17, 1994, Mercy, through Bushman's supervisors, told her to pursue any grievance through proper administrative channels. On August 18, the

supervisors issued a written warning telling her not to harass co-workers. Included in this warning was a reprimand the supervisors read to her in part, and directed her to read. The warning indicated that any violation of the warning could result in termination of her employment. Bushman disregarded the warning and that evening Bushman contacted Dana Wickman and attempted to contact Carrie Mrkvicka.[1] Wickman felt she was being harassed and put the call on a speaker phone for her husband to listen. Wickman testified that because of the phone call, she and her husband felt their evening plans for an anniversary celebration were ruined, even though they still went out for dinner. Mercy received complaints the following day.

While it is true that Bushman was not barred from contacting her co-workers *per se*, but barred from harassing them, a reasonable employee should be able to correlate her past conduct with the conduct she repeated immediately following her reprimand and warning. That is, Bushman, having read in the reprimand that nine employees complained of "intimidating, harassing and threatening" conversations, should have been on notice her phone calls were not welcome and such calls would violate the directives of the warning.

Substantial evidence. Bushman argues the district court erred in affirming the decision of the EAB because the record does not contain substantial evidence of

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[1] Mrkvicka's fiancé, Bill Carnahan, received repeated hang-up calls and, after 11:00 p.m., Bushman called again and this time spoke to Carnahan inquiring as to where Mrkvicka was.

misconduct on her part. Bushman urges us to examine the record as a whole when the adequacy of substantial evidence is in dispute, citing *Iowa State Fairgrounds Sec. v. Iowa Civil Rights Comm'n*, 322 N.W.2d 293, 295 (Iowa 1982). However, the *Fairgrounds* court expressly rejected the view that the ALJ's decision was entitled to enhanced weight in the substantial evidence test. *Id.* at 294-295. It stated:

> Giving elevated status to a hearing officer's proposed decision when the agency reaches a contrary decision without explaining how it arrived at a different view of the probative force of the evidence would introduce an unwarranted complication into the substantial evidence test. We decline to take that step.

Id. at 295. Further, the agency is cloaked with the right to find facts in the first instance, making the "hearing officer an adjunct of the agency rather than an independent decision maker." *Id.* at 294.

Bushman next argues the district court should have deferred to the findings of fact of the ALJ as the EAB was not "clear and concise" in its ruling. We disagree. First, "the findings and conclusions of the agency are easily deduced from the language of the board's order and its context." *Brekke v. Iowa State Bd. of Educ.*, 449 N.W.2d 345, 346 (Iowa 1989). Second, even if we look to the entire record in this case, we cannot say, as a matter of law, the agency's findings were based on insubstantial evidence.

Bushman further asserts the EAB found she was fired for misconduct but failed to specifically set forth its factual basis in support of that determination. We

decline to delve into the disputed factual findings established by the EAB and affirmed by the district court. Our limited scope of factual review

> . . . is warranted by the presumably greater expertise an agency has over matters within its purview. So unless the agency is clearly shown to have acted unconstitutionally, in violation of statutory mandate, or without substantial support in the record, . . . we should 'broadly and liberally apply those findings in order to uphold rather than defeat the [agency's] decision.'

Norland, 412 N.W.2d at 908 (quoting *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981) and citing *Churchill Truck Lines, Inc. v. Transportation Regulation Bd.*, 274 N.W.2d 295, 299 (Iowa 1979)).

Having reviewed the record and the findings of the EAB, we do not find the district court erred in supporting the EAB's determination that Bushman's actions rose to the level of substantial misconduct disqualifying her from unemployment benefits.

We find the EAB did not violate any constitutional or statutory mandates, nor was its ruling made without substantial support in the record.

We accordingly affirm the district court.

AFFIRMED.