FILED
MAY 2 8 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DANIEL N. DePOVER, JR.)

Petitioner-Appellant,)

vs.)

IOWA DEPARTMENT OF JOB SERVICE APPEAL BOARD and ALTER TRUCKING AND TERMINAL CORPORATION,)

Respondents-Appellees.)

Filed May 28, 1985

5-165
84-1146

Appeal from the Iowa District Court for Scott County - David Sohr, Judge.

Petitioner appeals from the district court's affirmance of the Job Service decision denying his unemployment benefits. AFFIRMED.

Theodore J. Priester, of Ottesen, Hoffman & Priester, Davenport, for petitioner-appellant.

Walter F. Maley, Blair H. Dewey and Joseph L. Bervid, of Iowa Department of Job Service, Des Moines, for Iowa Department of Job Service Appeal Board.

Heard by Snell, P.J., and Schlegel and Sackett, JJ.

Petitioner Daniel DePover, Jr., was employed as a truck driver for Alter Trucking & Terminal Corporation. His job was to haul metal scrap pieces or turnings from other factories to Alter's terminal in Davenport. On November 24, 1982, while DePover was hauling a load of turnings, both the president and manager of Alter observed metal pieces falling from the truck onto the roadway. Because DePover had failed to clean off the sides and top of the truck prior to the trip and because he had received prior warnings, he was terminated for misconduct.

When appellant applied for unemployment benefits, the initial claim was approved by a claims deputy. However, on appeal, the ruling was subsequently reversed and the claim was denied by the hearing officer. That ruling was affirmed by the district court and this appeal followed.

Our review is confined to determining whether there is substantial evidence to warrant the decision the agency made. Woods v. Iowa Dep't of Job Serv., 315 N.W.2d 838, 840 (Iowa Ct. App. 1981). The record is viewed as a whole, and if substantial evidence supports the agency's action, then its findings are binding on the court. Hawk v. Jim Hawk Chevrolet-Buick, Inc., 282 N.W.2d 84, 86-87 (Iowa 1979). Substantial evidence is that evidence which a reasonable person would accept as adequate to reach a conclusion. Billingsley v. Iowa Dep't of Job Serv., 338 N.W.2d 538, 540 (Iowa Ct. App. 1983).

DePover was terminated because of misconduct. The Iowa Admin. Code section 370-4.32(1) defines 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. (Emphasis added).

Claimant contends the evidence was insufficient to support misconduct because it consisted primarily of hearsay testimony concerning prior reprimands he had received.

Hearsay evidence is admissible at an agency hearing if it is the kind of evidence that reasonably prudent persons rely on. Iowa Code §17 A.14(1); See also Ritchey v. Iowa Employment Sec. Comm'n, 216 N.W.2d 580, 584 (Iowa 1974). The evidence admitted, however, is not hearsay because it was not offered to prove the truth of the matter asserted. Iowa R. of Evid. 801(c). The evidence referred to was letters of reprimand contained in plaintiff's employee file. The letters referred to previous rule infractions by DePover, such as entering and exiting through the wrong gate, leaving his truck unattended, and failing to secure a load.

The law requires that the misconduct be the immediate cause of discharge, and:

> While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code section 370-4.32(8). The letter warnings were not offered as evidence of previous misconduct because the discharge must be based on the current act. They were offered to show that DePover had been warned and knew his actions were considered misconduct by his employer.

There was also testimony that motorists' tires were being damaged by fallen turnings and claims were being made against Alter for those damages. Alter's

employees had been informed of this. DePover did not deny he was aware of the damage caused and that he had been warned to secure the metal pieces to prevent them from blowing off. The plant manager testified he saw metal pieces flying off the truck DePover was driving.

Claimant argues that at the most his conduct was simple negligence and dismissal for misconduct requires "willful or wanton disregard of an employer's interest." Because DePover had knowledge that Alter was paying claims for damaged tires and because he had been warned, the hearing officer had sufficient evidence to find DePover's failure to secure his load was willful and wanton.

We affirm the denial of unemployment benefits.

AFFIRMED.