FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-526 / 90-450

JESSE M. GUERRA,

Petitioner-Appellant,

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vs.

EMPLOYMENT APPEAL BOARD and CITY OF ONAWA,

Respondents-Appellees.

Appeal from the Iowa District Court for Monona County, Terry L. Huitink, Judge.

Petitioner appeals the trial court's affirmance of an agency decision denying him benefits because he committed misconduct in connection with his employment. **AFFIRMED.**

Frank Cal Tenuta, Legal Services Corporation of Iowa, Sioux City, for appellant.

William C. Whitten, for appellee Employment Appeal Board.

Gary Taylor, Onawa, for appellee City of Onawa.

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

SACKETT, J.

Petitioner-appellant Jesse M. Guerra appeals the trial court's decision affirming the decision of respondent-appellee Employment Appeal Board denying him unemployment benefits after his employment with respondent-appellee City of Onawa was terminated.

This issue is whether there is substantial evidence to support the agency's findings that appellant committed misconduct in the course of his employment. Appellant contends there is not substantial evidence. He contends what evidence there is is uncorroborated hearsay, and the fact-findings of the agency do not support a holding of misconduct. We affirm.

The decisions of the agency are final if supported by substantial evidence and correct conclusions of law. Heatherly v. Iowa Department of Job Service, 397 N.W.2d 670 (Iowa 1987). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. Aluminum Company of America v. Employment Appeal Board, 449 N.W.2d 391 (Iowa 1989); Hollensbe v. Iowa Department of Job Service, 418 N.W.2d 77 (Iowa 1987).

Our review of agency decisions is at law and not de novo. We review the case to ascertain whether the agency acted arbitrarily or capriciously, committed an error of law, or otherwise violated Iowa Code section 17A.19(8) (1989); Dubuque Community School Dist. v. Public Employment

Relations Board, 424 N.W.2d 427 (Iowa 1988); Messina v. Iowa Department of Job Service, 341 N.W.2d 52, 59 (Iowa 1983). This court must broadly and liberally apply the board's findings in order to uphold rather than defeat the decision. Aluminum Company of America v. Employment Appeal Board, 449 N.W.2d 391 (Iowa 1989).

The district court affirmed the Employment Appeal Board's affirmance of an administrative law judge's decision that the employer had established misconduct by the claimant and, that along with the current act of misconduct, there were past acts of misconduct which the employer considered.

Appellant was employed as a police officer by the City of Onawa from 1981 through April 3, 1989. Prior to April 1989 appellant had two problems on the job. On one occasion he intentionally broke the back light of a vehicle with his flash light. On a second occasion he was responsible for preparing and circulating a memo falsely stating Joseph Fouts had AIDS. These two problems are documented and are not challenged.

The event precipitating his discharge occurred when appellant called the county attorney about the resolution of charges filed against Joseph Fouts. The city discharged appellant because it determined appellant had threatened the county attorney. Appellant admits he contacted the county attorney but denies threatening him. The county

attorney did not testify. The county attorney's evidence came in by way of a letter he had written to the city attorney. In the letter the county attorney outlined the conversation he had with appellant. The letter related appellant had called the county attorney on the phone about the charges filed against Joe Fouts. After the county attorney visited with appellant about the disposition of the charges, the appellant said, "You sell me out again you asshole and you'll be in trouble." The county attorney's letter said this call came at 4 to 5 p.m. He said he received another call from appellant about 5:15 p.m. wherein appellant said he would be waiting for the county attorney when he left his office. Appellant drove past the county attorney's office in his personal vehicle. The county attorney called city officials.

The agency found the county attorney felt threatened and the fear seemed reasonable. Appellant contends these findings are not sufficient for misconduct, and they are only based on uncorroborated hearsay. The findings support a determination of misconduct when viewed as the agency did in the context with the two earlier incidents.

The next issue raised by appellant is that the findings are only supported by uncorroborated hearsay. Hearsay is generally admissible in administrative hearings. McConnell v. Iowa Dep't of Job Serv., 327 N.W.2d 234, 237 (Iowa 1982). The United States Supreme Court has stated, "Mere

uncorroborated hearsay . . . does not constitute substantial evidence." Consolidated Edison Co. v. NLRB, 305 U.S. 197, 230, 59 S. Ct. 206, 217, 83 L. Ed. 126, 140 (1938); see also TRW-United Greenfield Div. v. NLRB, 716 F.2d 1391, 1394 (11th Cir. 1983) (following Consolidated Edison); Boyle's Famous Corned Beef Co. v. NLRB, 400 F.2d 154, 169-70 (8th Cir. 1968) (finding of unfair labor practice must be based on more than uncorroborated hearsay). The Court's statement in Consolidated Edison has been interpreted not to prohibit reliance on all hearsay evidence, but rather on that which is without sufficient probative force. See Richardson v. Perales, 402 U.S. 389, 407, 91 S. Ct. 1420, 1430, 28 L. Ed. 2d 842, 856 (1971); School Bd. v. Department of Health, Educ. & Welfare, 525 F.2d 900, 905-06 (5th Cir. 1976). See also Nieman v. Iowa Dept. of Transp. MVD, 452 N.W.2d 203, 205-06 (Iowa 1989). The county attorney's letter is corroborated in part by a police officer investigating the complaint, appellant's own admissions, and the earlier incident involving Fouts. We affirm.

AFFIRMED.