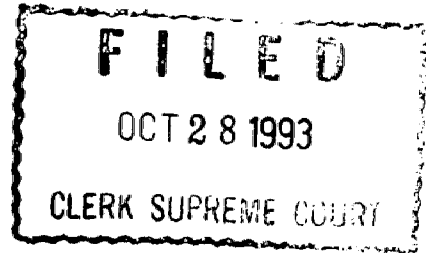


IN THE COURT OF APPEALS OF IOWA

No. 3-199 / 92-1497



GOWRIE CARE CENTER,
Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD,
Respondent-Appellee,

and

COLLEEN B. WOOD,
Respondent.

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Appeal from the Iowa District Court for Webster County,
Newt Draheim, Judge.

The petitioner appeals from a judgment of the district court affirming the ruling of the Employment Appeal Board that the respondent employee was not disqualified from receiving unemployment benefits since she did not commit willful misconduct. **AFFIRMED.**

David A. Sergeant, Fort Dodge, for appellant.

William C. Whitten, Des Moines, for appellee.

Heard by Schlegel, P.J., and Oxberger, C.J., and
Sackett, J. Donielson, J., takes no part.

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OXBERGER, C.J.

The respondent, Colleen Wood, obtained employment with the petitioner, Gowrie Care Center, on March 20, 1988, as a nurse's aide. Wood later became a certified medical aide and became a licensed practical nurse (LPN). Wood received her registered nurse license (RN) on August 28, 1990.

On December 23, 1990, Wood was assigned as the on-duty nurse, but arranged for a nurse's aide to work in her place. At approximately 2:00 a.m. on December 23, the aide called Wood at home and reported a patient had pulled out her catheter. Wood directed over the telephone that the catheter be left out since she believed the doctor's order did not require re-insertion. Wood did not come in to examine the patient since the aide stated there appeared to be no bleeding and no discomfort. The catheter was reinserted the next morning.

Wood had received four previous warnings concerning violations of company policy. On December 26, 1990, Wood received a written warning based on the catheter incident.

Wood was forced to submit a written resignation on December 29, 1990 and filed a claim for unemployment compensation. The claims officer denied Wood's claim on the grounds she was discharged for misconduct. On appeal, the administrative law judge (ALJ) reversed the claims officer. Gowrie appealed to the Employment Appeal Board (EAB) which affirmed the decision of the ALJ.

On May 22, 1991, Gowrie filed a petition for judicial review, arguing that the EAB improperly reviewed the

decision of the ALJ by ignoring applicable Iowa law regarding duties and responsibilities of nurses and nursing home facilities. Gowrie filed an application to present additional evidence. At the hearing on the motion, Gowrie submitted the proposed evidence through a professional statement of Gowrie's attorney. The district court denied Gowrie's application to present additional evidence. The district court ruled Wood was not guilty of misconduct and affirmed the decision of the EAB. Gowrie has appealed.

The fighting issue in this case is whether the district court's determination that Wood was not guilty of misconduct, thus allowing her to receive unemployment benefits, is supported by substantial evidence.

Gowrie argues Wood was guilty of misconduct. It maintains it did not have to show misconduct from the incident involving the catheter, but could point to other verbal and written warnings received by Wood the previous two years. Gowrie contends that the district court did not specify the facts on which it based its ruling.

The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that determination this court applies the standards of Iowa Code section 17A.19(8) (1991) to the agency action

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to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

A person who is discharged for misconduct in employment is disqualified from receiving unemployment benefits. Iowa Code section 96.5(2)(a) 1989. What constitutes misconduct justifying termination of an employee and what is misconduct warranting denial of unemployment benefits are two separate decisions. Brown v. Iowa Dep't of Job

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Serv., 367 N.W.2d 305, 306 (Iowa App. 1985). In order to support a disqualification from benefits, the misconduct must be substantial. Newman v. Iowa Dep't of Job Serv., 351 N.W.2d 262, 265 (Iowa App. 1984). In addition, it is necessary to establish that the claimant willfully and intentionally committed an act or acts which were detrimental to the best interests of the employer. West v. Employment Appeal Board, 489 N.W.2d 731, 734 (Iowa 1992).

We find no evidence of willfulness on the part of Wood. Wood stated she was not aware of any requirement that she come into the facility to assess the patient personally. The resident did not suffer any adverse effect from the removal of the catheter. Even the employer did not allege the incident giving rise to the termination of employment was, in and of itself, sufficient grounds for dismissal. The grounds given for the decision to discharge Wood was the existence of three warnings against her. Based on these findings, we conclude the decision of the district court is supported by substantial evidence.

Affirming the district court's decision to award Wood unemployment benefits is not to say we condone her conduct. We, in our limited scope of review, are merely stating we find substantial evidence to support the decision of the Employment Appeal Board.

We have considered the issues raised on appeal and find them without merit.

AFFIRMED.