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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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ROBERT L. FYE,

Petitioner-Appellee,

vs

APPEAL BOARD, IOWA DEPARTMENT OF JOB SERVICE, AND KEN'S PIZZA PARLOR,

Respondents-Appellants.

Filed September 6, 1984

4-293
83-1433

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

Respondents appeal from the district court decision on judicial review reversing petitioner's disqualification from receipt of unemployment benefits. REVERSED.

Mark L. Zaiger of Shuttleworth & Ingersoll, Cedar Rapids, Iowa, for respondents-appellants.

Gerald J. Kucera of Keyes, Bennett & Kucera, Cedar Rapids, Iowa, for petitioner-appellee.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

HAYDEN, J.

Respondents appeal from the district court decision on judicial review reversing petitioner's disqualification from receipt of unemployment benefits. They assert that substantial evidence supports the agency's determination that petitioner was discharged for misconduct.

Petitioner-claimant, Robert Fye, was employed as manager of a pizza restaurant from November 15, 1980, until October 12, 1981. Phil Mason, the area general manager, testified on behalf of the employer that claimant was verbally warned several times that bank deposits had to be made daily. On September 28, 1981, claimant signed a counseling form indicating that he was advised his employment could be terminated if he did not correct violations of company security policies. Mason testified that on October 12, 1981, he fired claimant after finding two days' deposits in the restaurant safe.

Claimant testified that he did not receive any verbal warnings regarding bank deposits and that the written counseling form was a sham. Claimant argued that his employer decided to fire him because of pressure from the parents of a former employee of the restaurant. Claimant admitted that there were two days' deposits in the restaurant on October 12th in violation of company policy. He claimed, however, that an employee had called in sick and that since he was the only one in the restaurant qualified to work the cash register, he could not make the bank deposit by the 2:00 p.m. deadline without closing the store.

The hearing officer's decision denying claimant unemployment benefits was affirmed by the respondent-agency. On judicial review the district court found that there was insufficient evidence in the record to support the finding of misconduct. Specifically the court stated that there was no evidence that claimant could have made the required bank deposit without closing the restaurant.

I. Scope of Review. Pursuant to Iowa Code section 17A.20 (1983), this court's duty in reviewing a decision of the district court is to correct errors of law made by the district court. Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979). The district court, when exercising its powers of judicial review under section 17A.19, is itself functioning in an appellate capacity to correct the errors of law specified in section 17A.19(8). Id. In order to determine whether the district court correctly reviewed the agency decision, this court applies the standards of section 17A.19(8) to the agency action. If this court's conclusions are the same as the district court, affirmance is required; if not, reversal may be in order. Id. at 429-30.

Section 17A.19(8)(f) provides that the district court shall reverse or modify the agency action if it is "unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole." Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269, 270 (Iowa 1982). It is irrelevant that a different conclusion could also have been reached based on the evidence. Id.; Woods v. Iowa Department of Job Service, 315 N.W.2d 838, 841 (Iowa Ct. App. 1981). If the facts are in dispute or if reasonable minds may differ on the inferences to be drawn from the evidence, the agency's findings are conclusive. McConnell v. Iowa Department of Job Service, 327 N.W.2d 234, 236 (Iowa 1982).

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, 337 N W.2d at 222. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits. Id.

There was evidence in this case that the employer had a written policy of requiring its store managers to make daily bank deposits prior to 2:00 p.m. The employer produced evidence from his records that claimant repeatedly made deposits anywhere from one to four days late. There was evidence that claimant was verbally reminded on more than one occasion to make timely deposits. The record includes a memorandum sent by the employer to all store managers emphasizing the importance of following the company security policies, including daily bank deposits. Claimant admits that he signed a counseling form on September 28, 1981, stating that he had violated company security policies and that continued violation could result in involuntary termination of his employment. Claimant also admits that on October 12 his safe contained two days' worth of deposits in violation of the rule.

The district court relied upon claimant's explanation that he was unable to make the deposit by the required deadline on October 11 without closing the restaurant. We conclude, however, that there is substantial evidence in the record to support the agency's findings of fact that claimant could have complied with

the policy without closing the restaurant. The record shows that the bank is only a short distance from the restaurant. It was also in evidence that while the restaurant did not open until 11:00 a.m., claimant was required to be at work considerably earlier, and could have made the deposit before the restaurant opened. Furthermore, it was shown that it was claimant's responsibility to make sure someone capable of running the restaurant was on duty so that claimant could make the deposit.

Although a different conclusion possibly could be reached from the record, we find there is substantial evidence to support the conclusion reached by the agency. Claimant's failure to make timely bank deposits after being warned verbally and in writing was a deliberate act detrimental to the employer's interests. Therefore, claimant is guilty of misconduct. The decision of the district court must be reversed and the decision of the respondent-agency is reinstated.

REVERSED.

Snell, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J., (dissenting).

I agree with the trial court's conclusion: "... petitioner's failure to make the required bank deposit was not a material breach of his employment obligation as required by the departmental rule. Rather, it appears to be more in the nature of a good faith attempt to comply with company rules and keep the business establishment, open..."