FILED
OCT 0 5 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-345 / 88-1527

RICHARD J. PEMBERTON,

Petitioner-Appellant,

vs.

SMITH'S TRANSFER CORPORATION,
and EMPLOYMENT APPEAL BOARD, IOWA
DEPARTMENT OF JOB SERVICE,

Respondents-Appellees.

Appeal from the Iowa District Court for Jackson County (22043), Margaret S. Briles, Judge.

Petitioner appeals a district court decision affirming a denial of unemployment benefits by the Employment Appeal Board. **AFFIRMED.**

Russell A. Neuwoehner, Dubuque, for petitioner-appellant.

Patrick O'Day of Gates, McDonald and Company, West Des Moines, for respondent-appellee Smith's Transfer Coroporation.

Blair H. Dewey and William C. Whitten for respondent-appellee Employment Appeal Board.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

SACKETT, J.

Petitioner-appellant Richard J. Pemberton appeals a district court decision affirming a denial of unemployment benefits by the Employment Appeal Board. Petitioner claims the district court erred in failing to find that the appeal board's decision was an abuse of discretion, unreasonable, arbitrary and capricious. He contends the record does not establish misconduct on his part that would disqualify him from unemployment benefits.

Our scope of review is limited to the correction of errors at law. Ray v. Iowa Dep't of Job Serv., 398 N.W.2d 191, 193 (Iowa App. 1986). We are bound by an agency's findings of fact if they are supported by substantial evidence. See New Homestead v. Iowa Dep't of Job Serv., 322 N.W.2d 269, 270 (Iowa 1982). We affirm the district court decision.

Petitioner was placed on a sixty-day suspension from his job as a truck driver with respondent-appellee Smith's Transfer Corporation in January 1986. He was to return to work on March 2, 1986. Instead of returning, he took four weeks of accrued vacation, and was then scheduled to return to work on March 30, 1986. On March 29, petitioner contacted respondent's operations manager, James Newburg, and told him he would be unable to return to work at that time, as he was under a doctor's care for back pain. Newburg testified he asked petitioner to schedule a

doctor's appointment and contact him with the results. Petitioner does not recall whether or not he promised to contact Newburg after seeing the doctor.

Newburg contacted petitioner by phone on April 11, April 15, and May 8. Each time, petitioner said he had not yet had a doctor's appointment, but was under a doctor's care. During the May 8 call, petitioner said he would be seeing his doctor on May 9 or 12, and would contact Newburg afterward, according to Newburg.

Newburg attempted to phone petitioner continually from May 13 to May 22, with no success. On May 22, not having heard from petitioner since May 8 and being unable to contact him by phone, Newburg sent petitioner a letter terminating the employment relationship. The letter stated that the respondent considered petitioner to have voluntarily quit because he had not contacted respondent as promised and had been unavailable when respondent telephoned.

Petitioner's original claim for unemployment benefits was granted. Respondent protested, claiming petitioner was discharged for being unavailable for work. A hearing officer found petitioner was discharged for misconduct and denied benefits. The Employment Appeal Board affirmed by a 2-1 vote. The district court affirmed the appeal board.

Petitioner contends the appeal board decision was an abuse of discretion, unreasonable, arbitrary, and

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capricious. He argues the record does not contain substantial evidence of misconduct on his part that justifies a denial of unemployment benefits. We disagree.

We must reverse the agency decision if it is unsupported by substantial evidence. Iowa Code § 17A.19(8)(f) (1989). Evidence is substantial if the agency could reasonably have found it adequate to reach its conclusion. See Mercy Health Center v. State Health Facilities Council, 360 N.W.2d 808, 811-12 (Iowa 1985).

Misconduct must be substantial in order to justify a denial of unemployment benefits. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The acts of the employee must show a willful and wanton disregard of the employer's interest, as in a violation of a standard of behavior that the employer has the right to expect of employees. Id. at 735.

We find the agency could reasonably have found substantial evidence existed to conclude that petitioner promised to contact Newburg after seeing a doctor, and failed to do so. Such behavior is sufficient misconduct to warrant a denial of benefits. An employer has a right to expect its employees to keep it informed as to when they will be available to work. Petitioner violated this standard of behavior by failing to contact Newburg as requested. Newburg asked petitioner to call him so he would know the details of petitioner's physical condition

and thus know when he could next count on petitioner working. It is especially important for an employer such as Smith's Transfer to know which of its employees are available to work, since loads are usually assigned according to the seniority of the available drivers. Newburg had to contact petitioner several times when expected calls from him did not occur. Eventually, Newburg was unable to reach petitioner by phone at all, having made over twenty attempts in a ten-day period. These phone calls were verified by a union representative. As a result of petitioner's complete unavailability, Newburg had no idea when he could next count on petitioner coming to work.

We find substantial evidence exists to conclude that petitioner was guilty of misconduct sufficient to deny his request for unemployment benefits. The decision of the district court is affirmed.

AFFIRMED.