IN THE COURT OF APPEALS OF IOWA

No. 1-453 / 91-164

FILED
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CLERK SUPREME COURT

657

MICHAEL WRIGHT,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD and AMERICAN AMBULANCE,

Appellees.

Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge.

Petitioner appeals a judgment of the district court affirming the decision of the Employment Appeal Board which denied his request for unemployment benefits. **AFFIRMED.**

Devon Hintze-Miller of Human Services Campus, for appellant.

William C. Whitten and Joe E. Smith of the Employment Appeal Board, for appellee.

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

SCHLEGEL, J.

Michael Wright began employment with American Ambulance on September 25, 1989, as an emergency medical technician (EMT). American Ambulance is based in Omaha, Nebraska. Wright had indicated on his employment application that he had completed training and had obtained a EMT certificate in Iowa. Wright is a resident of Iowa.

On November 1, 1989, the employer requested Wright to produce his certification. The employer needed a record of Wright's certification so he could work as an ambulance attendant in Nebraska. Wright never provided the employer with a record of his certification.

Also on November 1, 1989, Wright notified the employer of his intention to resign, effective November 15. However, on November 8 Wright suffered an injury while on the job, and surgery on his knee was required. Wright was not released to work until December 29, 1989. In the meantime, on December 5, 1989, the employer notified Wright he was discharged.

Wright filed a claim for unemployment compensation benefits. He claimed he quit his employment because of continued racial harassment. He also claimed the employer discharged him in retaliation for his workers' compensation claim. The employer claimed Wright had been discharged for misconduct based on his failure to provide a record of his certification, which was a condition of his continued employment.

An initial decision by a Job Service representative awarded Wright benefits. The employer then sought an administrative hearing. Wright did not participate in the hearing. The administrative law judge (ALJ) found Wright had misled the employer regarding his certification to work as an EMT and failed to provide a record of his certification. The ALJ determined Wright failed to comply with the terms of his employment and this constituted misconduct.

Wright obtained counsel and sought a rehearing. This request was denied. The Employment Appeal Board affirmed the ALJ. Wright then filed a petition for judicial review. The district court found the Board's decision was supported by substantial evidence and affirmed the Board. Wright now appeals.

Our scope of review in cases arising out of the Iowa Administrative Procedure Act is for the correction of errors of law, not de novo. Pepsi Cola Bottling Co. v. Employment Appeal Board, 465 N.W.2d 674, 675 (Iowa App. 1990). The agency's determinations of questions of law are entitled to careful consideration, but are not conclusive and are subject to review on appeal. Thomas v. William Knudson & Son, Inc., 349 N.W.2d 124, 125 (Iowa App. 1984). Where the facts are disputed, we will adopt the factual determinations made by the agency as long as they are supported by substantial evidence when viewing the record as a whole. Department of Transportation v. Van Cannon, 459 N.W.2d 900, 902 (Iowa 1990).

Wright claims the decision of the Board is not supported by substantial evidence. He states the employer knew he was in the process of obtaining his certification when he was hired. On his written application Wright only stated that he had completed EMT training. He also points out that the person he allegedly told he was certified did not testify at the hearing. Wright contends he did not engage in willful or intentional conduct, but was proceeding to obtain his EMT certificate at the time he was discharged.

The substantial evidence test is applied to the entire record; evidence is substantial if a reasonable mind would accept it as adequate to reach a conclusion. Armstrong v. State of Iowa Buildings & Grounds, 382 N.W.2d 161, 166 (Iowa 1986). The question is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. Lithcote Co. v. Ballenger, 471 N.W.2d 64, 66 (Iowa App. 1991). 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.

Under Iowa Code section 96.5(2) an employee will be disqualified from receiving unemployment compensation if the employee has been discharged for misconduct. Newman v. Iowa Department of Job Service, 351 N.W.2d 806, 808 (Iowa App. 1984). The employer has the burden of proving misconduct. Id. Misconduct must be substantial in nature

to support a disqualification from unemployment benefits. Myers v. Employment Appeal Board, 462 N.W.2d 734, 737 (Iowa App. 1990). Misconduct is conduct which evinces a willful disregard of an employer's interest as is found in a deliberate violation or disregard of the standards of behavior which an employer has a right to expect of employees. Breithaupt v. Employment Appeal Board, 453 N.W.2d 532, 535 (Iowa App. 1990).

We find there was substantial evidence in the record to support the decision of the Board. The evidence shows Wright led his employer to believe he had EMT certification, when in fact he did not. This certification was a condition of Wright's employment. We find Wright's conduct constituted misconduct under the facts of this case. We affirm the Employment Appeal Board and the district court.

AFFIRMED.