IN THE COURT OF APPEALS OF IOWA

No. 7-307 / 96-1341 000201

CLINTON J. HANKINS,

Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD and DEPARTMENT OF EMPLOYMENT SERVICES and BEEF PRODUCTS, INC.,

Respondents-Appellees.

FILED
OCT 29 1997

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge.

Petitioner appeals from the district court's ruling affirming the decision of the Employment Appeal Board determining that he was disqualified from receiving employment benefits for misconduct. **AFFIRMED.**

Van T. Tran, Waterloo, for appellant.

Anita M. Garrison, Des Moines, for appellees.

Considered by Cady, C.J., and Sackett and Mahan, JJ.

SACKETT, J.

Appellant Clinton Hankins appeals the decision of the district court which affirmed the Employment Appeal Board's ruling denying his claim for unemployment benefits on the ground he had been discharged for misconduct. We affirm.

Hankins was employed by appellee Beef Products, Inc. The company had a policy employees would be discharged after three unexcused absences or eight excused absences during a one-year period. Hankins had a history of absences and was warned in August 1995 that one more excused or unexcused absence would be cause for discharge.

On August 21 and 22, Hankins called in sick. He was asked for medical documentation of his illness. On August 23, he brought a doctor's excuse for August 21 to personnel manager, Tom Anderson. Anderson informed Hankins he was discharged under the company's absenteeism policy. Hankins asked for another chance and Anderson gave him until 4:00 p.m. that day to bring in a doctor's excuse for August 22. Hankins did not bring in an excuse on August 23 and there was no reconsideration of his discharge.

Sometime between August 24 and August 26, Hankins brought in excuses from his physician, Dr. Ed Ceilley, for August 22 and August 23. Anderson contacted Dr. Ceilley. Dr. Ceilley told Anderson he had not seen Hankins on August 22 and did not know how he had gotten the notes.

Hankins filed a claim for unemployment benefits. The Administrative Law Judge determined Hankins had engaged in misconduct by failing to provide medical documentation as requested by his employer. This decision was affirmed by the Employment Appeal Board. On judicial review, the district court affirmed the board.

Hankins appeals. He claims the agency's decision is not supported by substantial evidence. Hankins asserts he was not able to comply with the employer's request for documentation because he was unable to get an appointment with Dr. Ceilley until 4:00 p.m. on August 23.

An agency's factual findings must be supported by substantial evidence in the record made before the agency when the record is viewed as a whole. *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa App. 1992). The Iowa Administrative Code provides:

> *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

345 Iowa Admin. Code § 4.32(7). In determining whether the unexcused absenteeism is excessive, we consider past acts and warnings. *Sallis v. Employment Appeal Board*, 437 N.W.2d 895, 897 (Iowa 1989).

We find substantial evidence in the record to support the decision of the Employment Appeal Board finding Hankins engaged in misconduct. Hankins was informed on August 22 and August 23 he needed medical documentation of his

illness. Hankins did not provide a doctor's excuse for August 22 within the time frame required by his employer. There was evidence the excuses he gave were not valid. His absence on that day was therefore unexcused. Based on Hankins' history of unexcused absenteeism and the prior warning about absences, we find there is substantial evidence to support a finding Hankins had excessive unexcused absenteeism which constituted misconduct.

We do not consider Hankins' arguments based on the Family and Medical Leave Act of 1993, 29 U.S.C. § 2061 et seq., because these arguments were not raised before the agency or the district court.

We affirm the decision of the district court and the Employment Appeal Board.

AFFIRMED.