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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

E. VIRGINIA BEST,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF JOB SERVICE and MEREDITH SERVICE CORPORATION,

Respondents-Appellees.

Filed September 27, 1983

3-200
2-69411

Appeal from Polk District Court, Anthony M. Critelli, Judge.

Petitioner appeals from the district court decision on judicial review affirming respondent agency's disqualification from receipt of unemployment benefits, asserting that substantial record evidence failed to support the conclusion that the conduct for which she was fired constituted misconduct. REVERSED.

Diane L. Dornburg and Elizabeth S. Kruidenier, Des Moines, for petitioner-appellant.

J. D. Hilmes and Glen Smith of Duncan, Jones, Riley & Finley, and Edmund Schlak, Jr., and Walter F. Maley and Blair H. Dewey, Des Moines, for respondents-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ. Sackett, J., takes no part.

OXBERGER, C.J.

Petitioner accused her supervisor of lying during a confrontation arising out of a misunderstood phone message which the supervisor had relayed to her earlier. When the dispute continued in the supervisor's office petitioner used language, later characterized as profane, involving the term "suck" and "heart's in your ass." Two days later petitioner again accused her supervisor of lying.

A claims deputy's decision disqualifying petitioner from receipt of unemployment benefits was reversed by a hearing officer on the ground that misconduct had not been established. The agency appeal board in a two-one decision reversed the hearing officer on the ground that petitioner's use of profane language to a supervisor and the accusation of lying constituted misconduct. The district court affirmed on judicial review, stating that the question presented was close. We reverse.

I. Scope of Review

Our review of agency action is governed by Iowa Code § 17A.19(8). We may reverse agency action if it is "unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole." § 17A.19(8)(f). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. City of Davenport v. Public Employment Relations Board, 264 N.W.2d 307, 311 (Iowa 1978). Our review is not de novo. On appeal from the district court's decision affirming the denial of unemployment benefits, our review is limited to a determination of whether the district court made errors of law when it exercised its authority to review of the agency action. Woods v. Iowa Department of Job Service, 315 N.W.2d 838, 840 (Iowa Ct. App. 1981).

II. Substantial Evidence

Ms. Best was disqualified from receiving unemployment benefits because she was discharged for misconduct. See Iowa Code § 96.5(2)(a). The Iowa Department

of Job Service has interpreted "misconduct" in 370 I.A.C. § 4.32(1)(a) 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."

(emphasis added). The employer has the burden of proving misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). We believe that the employer did not sustain his burden.

The issue of vulgarity as a basis of misconduct sufficient to warrant denial of unemployment benefits has only recently been addressed in this jurisdiction. In Budding v. Iowa Department of Job Service, 337 N.W.2d 219, (Iowa Ct. App. 1983), this court held that where the use of vulgar language is an isolated incident in an environment where decorous language is not required and is not occasioned by a deliberate refusal to obey a reasonable directive, we are inclined to view it as a minor peccadillo. Id. at 222. In that case, the petitioner was upset after having been given what he considered to be an unfair reprimand. He "blew off a little steam" and referred to his supervisor as a "dirty bitch." The court pointed out that misconduct which will deprive an employee of unemployment benefits must be more than just unsatisfactory conduct, as was the situation in that case.

We find the case at bar analogous to Budding. Ms. Best's son was to be a witness in court and had received threats previous to his court appearance. Ms.

Best was understandably worried about her son's safety. Ms. Best's son was going to call from the courthouse when he was done testifying and Ms. Best was to pick him up immediately. When the son called, he talked to the supervisor. There was an apparent misunderstanding about the time in which Ms. Best was going to pick up her son. When she got to the courthouse, she was not able to find him because of the apparent misunderstanding in the telephone conversation. Ultimately, the misunderstanding aggravated Ms. Best's present tension about her son's safety. After finding her son, Ms. Best returned to work and confronted her supervisor in an honest belief that the supervisor was at fault over the misunderstanding. In the course of the conversation, Ms. Best apparently told the supervisor that she did not "suck," that "her heart was in her ass," and furthermore that she thought the supervisor was lying about the phone call.

While we do not condone this sort of behavior, we believe it amounts to "unsatisfactory" conduct, not "willful or wanton disregard of an employer's interest." See 370 I.A.C. § 4.32(1)(a). In order to support a disqualification from unemployment benefits, the misconduct must be substantial. Budding at 222. We do not believe this incident stemming from one misunderstood phone call constitutes substantial misconduct, within the purview of 370 I.A.C. § 4.32(1)(a). The Employment Security Law should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment. Cosper at 10. We do not agree that Ms. Best's conduct rose to the level of "willful disregard of her employer's interest; therefore, warranting denial of unemployment benefits. The testimony indicated that Ms. Best did not want to lose her job. The record shows that she was agitated over her son's situation and possibly overreacted by accusing her supervisor of lying and telling her she did not "suck" and that her "heart was in her ass." The trial court made reference to the second confrontation and stated that Ms. Best had more than enough time to "cool down."

Even combining the two confrontations, we find it is not enough to warrant substantial misconduct. See Budding.

We therefore find that the record does not contain substantial evidence to prove misconduct as that term is defined by the Department of Job Service. The district court decision and the decision of the appeals board is reversed.

REVERSED.

All judges concur except Donielson and Snell, JJ., who dissent.

DONIELSON and SNELL, JJ., (dissenting).

The majority bases its holding on our recent decision in Budding v. Dept. of Job Service, 337 N.W.2d 219 (Iowa Ct. App. 1983), a 3-2 decision, Donielson and Snell dissenting. We continue to believe that "an employer has the right to expect decency and civility in the treatment of others, regardless of the work setting." Id. at ___.

In Budding the majority dismisses the conduct as "an isolated incident," a "minor peccadillo." Now in the present case, the majority finds no misconduct in two confrontations with petitioner's supervisor. The first one took place in front of 30 or 40 people when petitioner accused her supervisor of lying. Petitioner's stream of loud, angry words continued after the supervisor got her into her private office. Two days later when petitioner went to the reception area to pick up her check she again saw her supervisor and asked her why she had to lie and why she had to be so tacky. The supervisor asked her if she wanted to speak to Mr. Peterson. Petitioner said she didn't and asked her again why she had to lie.

Loud, boistrous, and abusive language, together with accusations that your supervisor is lying, made at different times, in two different settings, with two days of cooling-off time, do not constitute "a minor peccadillo." Factories and offices are not jungles or combat zones. They are where decent and respectful people earn a living while giving the same respectful conduct and treatment to others. To countenance such conduct would make the work place less desirable for employers and employees alike. See Hagan v. Peden Steel Co., 57 N.C. App. 373, 291 S.E. 2d 308, 309 (1982). Accord Jackson v. Brown, 136 So. 2d 329 (La. App. 1961)(the employee owes the employer loyalty, consideration and cooperation).

The unemployment compensation laws are not designed to countenance such conduct either. The law is supposed to help people who are out of work through "no fault of their own." Section 96.2 Iowa Code. Petitioner's conduct here "evince[es] such willful or wanton disregard of [her] employer's interest as is found in deliberate violation or disregard of standards by behavior which the employer has the right to expect of employees." 370 I.A.C. § 4.32(1)(a). Petitioner was discharged for misconduct and thus should not be entitled to jobless benefits.