IN THE COURT OF APPEALS OF IOWA

No. 1999-130 (9-346) / 98-1409
Filed September 29, 1999

TROY BRUCE,
Petitioner-Appellant,
vs.
EMPLOYMENT APPEAL BOARD
Respondent-Appellee,
and
R.R. DONNELLEY PRINTING CO.,
Intervenor-Appellee.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge.

Petitioner appeals from the district court ruling affirming on judicial review the decision of the Employment Appeals Board which denied petitioner's application for unemployment benefits. **AFFIRMED.**

Bruce H. Stoltze of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling and Levis, P.C., Des Moines, for appellant.

James R. Swanger and David K. Basler of Belin, Lamson, McCormick, Zumbach, Flynn, P.C., Des Moines, for appellee R.R. Donnelley Printing Co.

Considered by Streit, P.J., and Mahan, and Zimmer, JJ.

ZIMMER, J.

Petitioner appeals from the district court ruling affirming on judicial review the decision of the Employment Appeal Board which denied petitioner's application for unemployment benefits. We affirm.

I. Background. Petitioner, Troy Bruce, worked for intervenor, R.R. Donnelley Printing Company ("Donnelley"). On May 21, 1997, Bruce complained to his supervisor that other employees were standing around talking and not working. He felt he was doing a disproportionate share of work. Bruce told his immediate supervisor that he asked the other employees to help him, but one coworker had replied that Bruce should stay off of drugs because it was 'messing with his mind.' After that supervisor refused to take action, Bruce complained to a union steward and another supervisor. They again instructed Bruce to return to work. He refused. The supervisor repeated the directive and told Bruce another refusal would be considered insubordination and grounds for discharge under company rules. Union and personnel representatives also explained the consequences. Bruce again refused and was terminated.

Bruce filed a claim for unemployment benefits and was denied. He appealed and an administrative law judge ("ALJ") determined Bruce had been discharged for misconduct, disqualifying him from receiving benefits. Bruce further appealed and the Employment Appeal Board ("EAB") adopted the ALJ's decision. Bruce sought judicial review. The district court affirmed the EAB, finding Bruce had been told the consequences of insubordination, yet still refused to work.

Bruce appeals. He does not dispute the factual findings of the agency, but argues the incident does not amount to misconduct disqualifying him from unemployment benefits. He emphasizes his good work record and the working conditions he sought to avoid and suggests that his actions were at most a good faith error in judgment.

II. Scope of Review. In appeals from agency action, our review is at law, not de novo. *Henecke v. Iowa Div. of Job Service,* 533 N.W.2d 573, 575 (Iowa App. 1995); see *Freeland v. Employment Appeal Bd.,* 492 N.W.2d 193, 196 (Iowa 1992). In reviewing a district court decision on the validity of agency action, we decide whether the district court has correctly applied the law. *Freeland,* 492 N.W.2d at 196. We also review an agency's action to determine whether our conclusions are the same as those of the district court. *Cobb v. Employment Appeal Bd.,* 506 N.W.2d 445, 447 (Iowa 1993). We grant relief where substantial rights of a party have been prejudiced because the agency action is in excess of the agency's statutory authority, unsupported by substantial evidence, unreasonable, arbitrary or capricious, or affected by other error of law. Iowa Code § 17A.19(8) (1997); *Dico, Inc. v. Employment Appeal Bd.,* 576 N.W.2d 352, 354 (Iowa 1998). We do not interfere with factual findings unless the evidence is uncontradicted and reasonable minds could not draw different inferences. *See Norland v. Iowa Dep't of Job Service,* 412 N.W.2d 904, 908 (Iowa 1987).

III. Agency's Determination of Misconduct. Bruce based his refusal to return to work on his coworkers' laziness and one coworker's offhand comment that

Bruce was using drugs. Bruce disputes the agency's legal conclusion drawn from these facts. Donnelley, joined in its brief by the EAB, argues the reasons advanced by Bruce to justify his refusal are entitled to no weight and urges its instruction for Bruce to return to work was reasonable.

A. Misconduct. Iowa law disqualifies employees from receiving unemployment compensation for various reasons. *See* Iowa Code § 96.5. An employee's misconduct is a cause for disqualification. Iowa Code § 96.5(2). The Iowa Administrative Code, implementing Iowa Code section 96.5, defines 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 [sic] 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.

Iowa Admin. Code 871–24.32(1). Donnelley bore the burden at the administrative hearing to prove Bruce's misconduct. See *Henecke*, 533 N.W.2d at 575 (employer bears burden of proof to show misconduct).

We do not find the agency or the district court misapplied the law by concluding Bruce's refusal to return to work was misconduct. Willful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer. *Myers v. Iowa Dept. of Job Service,* 373 N.W.2d 507, 510 (Iowa App. 1985). Bruce clearly manifested an intent to disobey. Different individuals repeatedly told Bruce he would be terminated if he refused to return to his work station. Yet each time he was ordered to return, he refused.

Furthermore, the employer's instruction was reasonable. An instruction is reasonable if it presents no hardship to the employee and no threat to his or her health, safety, or morals. *See Endicott v. Iowa Dep't of Job Service,* 367 N.W.2d 300, 304 (Iowa App. 1985) (finding misconduct based on employee's unreasonable refusal to work overtime after employer's short-notice request). The supervisor's order that Bruce return to work presented no hardship or threat. He was not being required to perform his own work and that of several other people. Bruce's employment would not have been jeopardized if he had returned to his station and worked at a reasonable pace, even though he might have failed to do all of the others' work as well. Neither the lack of help with the workload nor the coworkers themselves presented any threat to his personal safety. We would be more inclined to reverse if Bruce's return to work had endangered him. *See Endicott*, 367 N.W.2d at 303, citing *McLean v. Unemployment Compensation Bd. of Review,* 476 Pa. 617, 383 A.2d 533 (1978)(holding that refusal to drive a truck that had not been operating properly did

not constitute misconduct). Bruce had avenues, other than a refusal to work, through which to pursue his grievances. We find Bruce acted unreasonably.

B. Good Cause. An employee's failure to perform a specific task does not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Department of Job Service,* 327 N.W.2d 768, 771 (Iowa App.1982) (finding good cause for refusal to perform task where employee subjected to repeated racial harassment during task's performance). Bruce cites *Woods* as controlling. We disagree. *Woods* involved race-based harassment. Bruce had no such justification for his insubordination.

In his reply brief, Bruce also claims Donnelley's requirement that he work extra hours was good cause because it constituted a change in his contract for hire. We find no support in the record for the allegation that Donnelley was going to require Bruce to work extra hours because of his coworkers' laziness. The supervisor simply told Bruce to return to his work station.

Bruce also asserts his refusal was simply a good faith error in judgment. We have previously interpreted good faith in this context to mean mistaken action taken with the intent to fulfill the employer's purpose. *See Henry v. Iowa Dep't of Job Service,* 391 N.W.2d 731, 737 (Iowa App. 1986) (reversing denial of benefits because employee in good faith attempted to follow employer's conflicting rules but had misinterpreted their meaning). There was no mistake, misunderstanding or misinterpretation involved in Bruce's refusal to return to work. He was aware of the grievance procedures available to him. The consequences of his refusal were

explained to him, yet he persisted. Bruce's prior work record does not aid his claim. *See Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230, 231 (Iowa App. 1990) (finding misconduct despite good work record). Bruce's refusal to follow his employer's instruction and return to work constituted misconduct.

AFFIRMED.