IN THE COURT OF APPEALS OF IOWA

No. 1-460 / 91-314

FILED
MAR 2 1992
CLERK SUPREME COURT

STAN L. TALASKA,

Appellee,

vs.

BERTCH CABINET MANUFACTURING, INC. and EMPLOYMENT APPEAL BOARD,

Appellants.

347

Appeal from the Iowa District Court for Black Hawk County, Joseph C. Keefe, Judge.

The employer and the Employment Appeal Board appeal the district court decision which reversed the Board. The Board had denied unemployment benefits to the petitioner on the ground that he had been discharged for misconduct. **AFFIRMED.**

William C. Whitten and Joe E. Smith, Des Moines, for appellant Employment Appeal Board.

Carter Stevens of Beecher, Rathert, Roberts, Field, Fister, Walker & Morris, Waterloo, for appellant Bertch.

Stanford J. Patterson, Waterloo, for appellee.

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

SCHLEGEL, J.

Petitioner Stan L. Talaska was employed as a foreman by Bertch Cabinet Manufacturing, Inc. from January 4, 1984, until October 3, 1989. On September 27, 1989, Talaska did not punch in on the time clock. He later wrote in the time of his arrival as 6 a.m., which was the time he was required to report for work. The procedure of writing in the time of arrival when an employee forgot to punch in had been previously approved by the employer. The written time would then be approved by a supervisor when the time cards were reviewed at the end of the week.

Talaska was tardy fifty-two minutes on September 28, 1989, because of a complication with his wife's pregnancy. His time card reflects this tardiness.

It appears that the employer heard rumors that Talaska was tardy on September 27. James Senn, the production manager, gathered the time cards before Talaska's supervisor, Russell O'Connell, could review them. Senn confronted Talaska on October 2, 1989, concerning the alleged falsification. Talaska was discharged on October 3, 1989.

Talaska then filed a claim for unemployment benefits. A job service representative originally granted him benefits. The employer then sought an administrative hearing. Talaska testified he had reported for work at 6 a.m. on September 27, 1989. Senn testified O'Connell had told him some employees had stated Talaska was late that

day. Several employees testified, but no employee was able to testify that he had actual knowledge Talaska was tardy on September 27.

The administrative law judge (ALJ) found Talaska was tardy on September 27 and that he had falsified his time card by writing in 6 a.m. as the time he reported for work. The ALJ concluded Talaska had engaged in misconduct and was not eligible for unemployment benefits. Talaska appealed to the Employment Appeal Board. The Board adopted the decision of the ALJ without comment.

Talaska filed a petition for judicial review. The petition included a certificate of service, but no affidavit of mailing. The employer did not participate in the judicial review proceedings. Talaska sought to introduce as additional evidence an affidavit by O'Connell. The court denied this request.

The district court reversed the Board. The court concluded the Board's decision was not supported by substantial evidence. In particular, the employer had presented no evidence that Talaska was actually tardy on September 27, 1989. If he was not tardy on that day, he did not falsify his time card. The court concluded there was no evidence Talaska had engaged in misconduct.

After the court's decision Bertch Cabinet filed a motion for a new trial which alleged it did not receive notice of the petition for judicial review. The employer and the Board claimed the district court did not have

subject matter jurisdiction at the time it entered its decision. The president and human relations director of Bertch Cabinet filed affidavits stating they had not received notice. The secretary of Talaska's attorney filed an affidavit stating she had mailed notice to Bertch Cabinet and the Employment Appeal Board.

The district court determined Talaska had substantially complied with the notice requirements of Iowa Code section 17A.19(2). The court concluded it had subject matter jurisdiction of the case. The respondents now appeal.

I. On appeal from a district court judgment in a judicial review proceeding, our task is to determine whether the district court correctly applied the law. Sioux City Brick & Tile Co. v. Employment Appeal Board, 449 N.W.2d 634, 637 (Iowa 1989). Like the district court, our review is at law, not de novo. Hollensbe v. Iowa Department of Job Service, 418 N.W.2d 77, 78 (Iowa App. 1987).

II. Respondents first claim the district court did not have authority to hear Talaska's petition for judicial review. Section 17A.19(2) provides, in applicable part:

> Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. . . Proof of mailing shall be by affidavit.

Subject matter jurisdiction refers to the authority of a court to hear a particular class of cases. Christie v. Rolscreen Co., 448 N.W.2d 447, 450 (Iowa 1989). A court may have subject matter jurisdiction but may not be able to entertain a particular case due to a lack of authority where jurisdiction has not been properly invoked. Id. Timely petition to the district court is a jurisdictional prerequisite for judicial review of final agency action. Sioux City Brick & Tile Co. v. Employment Appeal Board, 449 N.W.2d 634, 638 (Iowa 1989).

Substantial compliance with section 17A.19(2) is all that is required for the district court to acquire jurisdiction. Cowell v. All-American, Inc., 308 N.W.2d 92, 94 (Iowa 1981). There is no need for strict or literal compliance. Id. The provisions of the Iowa Administrative Procedure Act should be construed broadly in order to effectuate its purposes. Brown v. John Deere Waterloo Tractor Works, 423 N.W.2d 193, 194 (Iowa 1988). Furthermore, strict compliance is not required here because the parties have already been engaged in adversarial proceedings before the agency and know what the case is about. Id. at 195. Whether there has been substantial compliance with section 17A.19(2) depends upon the facts of each particular case. Id. at 194.

We affirm the district court's finding that Talaska substantially complied with section 17A.19(2). The

evidence showed notice was mailed to Bertch Cabinet and the Employment Appeal Board at the same time. Clearly, the Board received its notice. Talaska had no reason to doubt that Bertch Cabinet also received notice until the posttrial motions were filed. At that point he did file an affidavit to prove mailing. There is no requirement in section 17A.19(2) as to when proof of mailing must be made.

III. The respondents also claim the Board's decision was supported by substantial evidence and should have been affirmed by the district court.

In a contested case a court will grant relief from an agency decision which is not supported by substantial evidence in the record made before the agency when that record is viewed as a whole. Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 734 (Iowa App. 1986). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach the given conclusion. Lithcote Co. v. Ballenger, 471 N.W.2d 64, 66 (Iowa App. 1991). The question is not whether the evidence might support a different finding, but whether the evidence supports the findings actually made. Id.

A claimant will be disqualified from unemployment benefits if he or she 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

order to justify a denial of unemployment benefits. Breithaupt v. Employment Appeal Board, 453 N.W.2d 532, 535 (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. Id.

We agree with the district court there is not substantial evidence in the record in this case to support the Board's finding that Talaska engaged in misconduct. The finding that Talaska falsified his time card is valid only if Talaska was tardy on September 27, 1989, and thus wrote in a false time on his time card. There was no evidence Talaska was tardy on that day. While Senn testified he heard rumors Talaska was tardy on September 27, the employer could present no testimony from anyone who actually knew Talaska was tardy on that day. We affirm the decision of the district court.

AFFIRMED.

Oxberger, C.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent. Mailing is jurisdictional and the statute provides proof of mailing must be made by affidavit. When the trial court assumed jurisdiction and entered its ruling, these jurisdictional requirements had not been met.

I find evidence in the record to support the agency decision. I would reverse and dismiss Talaska's appeal from the agency decision.