

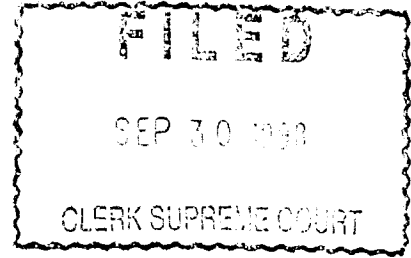
IN THE COURT OF APPEALS OF IOWA

No. 8-372 / 97-1904

FREDERICK R. SLAGENWEIT,
Appellant,

vs.

CITY OF CEDAR RAPIDS, Employer, **EMPLOYMENT APPEAL BOARD** and
JOB SERVICE OF IOWA,
Appellees.



Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge.

Frederick Slagenweit appeals the district court's ruling affirming the Employment Appeal Board's decision finding he was not entitled to unemployment benefits. **AFFIRMED.**

Benjamin W. Blackstock of Blackstock Law Offices, Cedar Rapids, for appellant.

Mohammad H. Sheronick, Cedar Rapids, for appellee-City.

William C. Whitten, Des Moines, for appellee-Employment Appeal Board.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

VOGEL, J.

Petitioner appeals the district court decision which affirmed the Employment Appeal Board's denial of his claim for unemployment benefits. He claims the Board's decision he engaged in misconduct is not supported by substantial evidence. We affirm on appeal.

Frederick R. Slagenweit was employed by the City of Cedar Rapids as a construction materials analyst. In 1993, he was diagnosed with tinnitus, which is a ringing in the ears. Slagenweit was given written warnings in November 1995, February 1996, May 1996, and August 1996, for tardiness. He was aware his job was in jeopardy for repeated tardiness. Slagenweit was again tardy on September 10 and 11, 1996. On September 13, 1996, the City Engineer terminated Slagenweit's employment effective September 27, 1996.

Slagenweit filed a claim for unemployment benefits. At his administrative hearing, he claimed he was sometimes tardy because he had a sleep disorder due to tinnitus. Slagenweit testified it was difficult for him to go to sleep at night. He also stated, "once I do get to sleep you could set off a bomb and I wouldn't wake up." Slagenweit asserted the tinnitus was due to exposure to loud noises at work.

The administrative law judge determined Slagenweit was not entitled to unemployment benefits because he had engaged in misconduct by being repeatedly tardy for work. This decision was adopted by the Employment Appeal Board. On judicial review, the district court affirmed the Board. Slagenweit now appeals.

On appeal from an administrative action, we are authorized to grant relief only if the agency's action is affected by error of law, unsupported by substantial evidence in the record, or characterized by an abuse of discretion. *George A. Hormel & Co. v. Jordan*, 569 N.W.2d 148, 151 (Iowa 1997). Evidence is substantial when a reasonable mind could accept it to reach the same findings. *Bridgestone/Firestone, Inc. v. Employment Appeal Bd.*, 570 N.W.2d 85, 90 (Iowa 1997).

Slagenweit contends there was not substantial evidence in the record to show he engaged in misconduct. He states his failure to arrive at work on time was due to an illness, tinnitus. He claims his tardiness was not intentional or deliberate.

Excessive unexcused absenteeism or tardiness may constitute misconduct. *Infante v. Iowa Dept. of Job Serv.*, 364 N.W.2d 262, 267 (Iowa App. 1984). On the other hand, excessive absenteeism caused by an incapacitating illness or other reasonable grounds for which the claimant is excused is not misconduct. *Id.* at 266. The supreme court has stated:

Misconduct connotes volition. A failure in good performance which results from inability or incapacity is not volitional and is thus not misconduct.

Huntoon v. Iowa Dept. of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979). However, oversleeping is not considered a "reasonable ground" for missing work. *Higgins v. Iowa Dept. of Job Serv.*, 350 N.W.2d 187, 191 (Iowa 1984).

We find there is substantial evidence in the record to support the Employment Appeal Board's decision that oversleeping, even if caused by the tinnitus, was not a

reasonable ground for missing work. Although Slagenweit knew he suffered from tinnitus, he did not explore other means to wake himself up in the morning. He was given several warnings that his tardiness was not acceptable to the employer. We conclude Slagenweit's continued tardiness constituted misconduct.

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

AFFIRMED.