

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 26 1987

CLERK SUPREME COURT

THOMAS L. McGINNIS,)

Petitioner-Appellant,)

vs.)

IOWA DEPARTMENT OF JOB SERVICE)
AND MENARDS, INC.,)

Respondents-Appellees.

Filed August 26, 1987

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7-159
86-964

Appeal from the Iowa District Court for Linn County (EQ 9258), William
R Eads, Judge.

The petitioner employee appeals a district court decision which affirmed
the agency finding that he was discharged for misconduct and so was denied
unemployment compensation benefits. **AFFIRMED.**

James E. Bobenhouse, Cedar Rapids, Iowa, for petitioner-appellant.

Blair H. Dewey and William C. Whitten, Employment Appeals Board, for
respondents-appellees.

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

SCHLEGEL, J.

The petitioner employee appeals a district court decision which affirmed the agency finding that he was discharged for misconduct and so was denied unemployment compensation benefits. We affirm.

The petitioner, Thomas L. McGinnis, was an employee for almost five years before he was discharged on March 11, 1985. McGinnis had previously been given two written warnings concerning his performance. On August 2, 1984, a company memorandum of deficiency was written asserting that McGinnis needed to correct certain matters relating to stocking and tagging merchandise. A write-up on October 23, 1984, involved McGinnis's not making supervisor decisions, inconsistent ordering, and failure to notify other employees as to when he was leaving or returning. The March 11, 1985, memorandum related to McGinnis's failing to send back some kerosene heaters to the distributor after he had been told to do so.

McGinnis filed a claim for unemployment benefits on March 14, 1985. The employer contested the claim. The Department of Job Service's claims deputy held that McGinnis was discharged for misconduct and was therefore ineligible for unemployment benefits. On appeal, the hearing officer affirmed the department's decision. The Appeal Board affirmed the hearing officer. The district court affirmed the Appeal Board. We affirm the district court.

In cases arising out of the Iowa Administrative Procedures Act, our scope of review is limited to the correction of errors at law. Iowa Code § 17A.20 (1987). In order to make a determination that an agency's findings are supported by substantial evidence, we apply the standards of Iowa Code section 17A.19(8) to the agency's action to determine whether this court's conclusions are the same as the district court's. Jackson County Public Hospital v. Public Employment Relations Board, 280 N.W.2d 426, 429-30 (Iowa 1979). Under Iowa Code

section 96.5(2)(a) (1985), an individual may be disqualified for unemployment benefits if that individual is discharged for misconduct. The administrative rule defining misconduct reflects legislative intent. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979), cert. denied, 444 U.S. 852, 100 S. Ct. 105, 62 L. Ed. 2d 68 (1978). 370 Iowa Administrative Code section 4.32(1)(a) limits misconduct to conduct evincing such willful or wanton disregard of standards of behavior which the employer has the right to expect from employees or to the intentional and substantial disregard of the employer's interests. 370 Iowa Administrative Code section 4.32(8) also provides that while past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct must be based on a current act.

Following supreme court decisions such as Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309, 311 (Iowa 1986), if we cannot find that the agency was compelled as a matter of law to render a finding that the petitioner's actions were not disqualifying misconduct, we cannot alter the decision. Here, the agency determined McGinnis was discharged for carelessness which, combined with past warnings, rose to the level of misconduct. In Infante v. Iowa Department of Job Service, 364 N.W.2d 262, 266 (Iowa App. 1984), we said that two earlier warnings could elevate a final incident into a showing of misconduct. In this case, there were two earlier reports of poor performance. Testimony at the hearing from supervisors of McGinnis established a pattern of poor performance, stocking, and inventory practice on McGinnis's part. This evidence was substantial enough so that a reasonable person could find it adequate to reach the conclusion that the agency made. See City of Davenport v. P.E.R.B., 264 N.W.2d 307, 311 (Iowa 1978).

AFFIRMED.

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