

IN THE COURT OF APPEALS OF IOWA

No. 9-546 / 89-284

FILED

JAN 25 1990

CLERK SUPREME COURT

JAMES R. KUIPER,

Appellee,

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vs.

EMPLOYMENT APPEAL BOARD, IOWA DIVISION OF JOB SERVICE, and
SHELDON COMMUNITY SCHOOL DISTRICT,

Appellants.

Appeal from the Iowa District Court for O'Brien County,
Frank B. Nelson, Judge.

Petitioner was discharged from his employment as a janitor for a school district and was denied unemployment benefits from the Employment Appeal Board. On judicial review the district court reversed; the school district and the board now appeal. **REVERSED.**

Thomas J. Whorley and Keith G. Thompson of Wolff, Whorley, De Hoogh & Thompson, Sheldon, for appellant Sheldon Community School District.

I. John Rossi and William C. Whitten, Des Moines, for appellant Employment Appeal Board.

William K. Klinker of Smith, Grigg, Shea & Klinker, P.C. Primghar, for appellee.

Heard by Schlegel, P.J., and Hayden and Habhab, JJ.

SCHLEGEL, P.J.

James Kuiper was denied unemployment benefits by the Iowa Employment Appeal Board (Board), which held he was discharged for misconduct. The district court reversed the Board's decision on appeal. The employer and the Board appeal the district court's ruling. We reverse.

Petitioner James R. Kuiper was employed as a janitor for the Sheldon Community School District. On December 17, 1987, Kuiper approached a female teacher, Adele Lenane, who was working alone in a room. Lenane did not encourage or solicit the presence of Kuiper. Kuiper then put his arm around the teacher and touched her breast. Lenane found these actions to be offensive. Kuiper was suspended on December 18, 1987, and ultimately discharged on January 6, 1988.

Kuiper filed a claim for unemployment benefits. A Job Service representative denied the benefits on the ground that Kuiper had been discharged for misconduct. Kuiper sought a hearing before a hearing officer. The hearing officer assumed that Kuiper unintentionally or accidentally touched the breast of the teacher, but found that the placing of his arm around the teacher without encouragement or solicitation was sexual harassment which constituted misconduct. The Employment Appeal Board affirmed the hearing officer.

Kuiper filed a petition for judicial review. The district court accepted the facts as found by the hearing officer. The court noted that Kuiper had testified that he had unintentionally or accidentally touched the breast of the teacher. The court determined that the mere placing of an arm around a coemployee does not constitute sexual harassment or misconduct. Thus, the court concluded that as a matter of law, Kuiper's conduct did not constitute misconduct.

The school district and the Iowa Employment Appeal Board now appeal. They claim the court erred in reversing the Board because there was substantial evidence in the record to support the Board's decision. Respondents state the evidence shows that Kuiper entered a room occupied only by a female teacher, where no other persons were present, and then approached the teacher, placing his arm around her and squeezing her breast. They feel this evidence shows a willful and deliberate disregard of the standards of behavior which the employer had a right to expect from its employees.

Respondents' second argument is that Kuiper's actions did constitute misconduct as a matter of law. Kuiper intentionally put his arm around the school teacher without her encouragement or solicitation, and consequently touched her breast. Respondents believe that whether or not Kuiper intentionally touched the teacher's breast is irrelevant.

They assert that his conduct was still a deliberate violation of the standards of behavior which the school district expects of its employees.

This appeal results from a contested case state agency proceeding. See Iowa Code § 17A.2(2) (1987). In "contested case" proceedings, the agency, rather than the district court, is empowered to hear evidence and make findings of fact. Iowa Code § 17A.19(7) (1987). The district court, when exercising the power of judicial review over agency action, is functioning in an appellate capacity to correct errors at law. Iowa Code § 17A.19(8) (1987). Kohorst v. Iowa State Commerce Commission, 384 N.W.2d 619, 621 (Iowa 1984). Our review of the district court's decision is limited to correction of errors of law. Roberts v. Iowa Dep't of Job Service, 356 N.W.2d 218, 221 (Iowa 1984). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. Evidence is substantial if a reasonable person would find it adequate for reaching a decision. Peoples Memorial Hospital v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982).

The findings of fact in this case are uncontested. The main contention of the appellee is that the fact findings of the hearing officer cannot constitute misconduct as a matter of law. Kuiper tries to emphasize the assumption by the hearing officer that even if the appellee did not

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intend to touch her breast, it was still misconduct. The hearing officer did not only hold that Kuiper did not intend to touch her breast. He held that, in this situation, the actions taken by Kuiper constituted sexual harassment. There was certainly substantial evidence to support this finding by the hearing officer. Apparently he did not believe Kuiper that placing his arm around the teacher was purely an action of friendship. Sexual harassment by Kuiper is clearly a "material breach of the duties and obligations arising out of such worker's contract of employment, and is a willful and wanton disregard of standards of behavior which the employer has the right to expect of employees." Huntoon v. Iowa Dep't. of Job Services, 275 N.W.2d 445, 447 (Iowa 1979). There is substantial evidence to support the finding of sexual harassment and, as a matter of law, sexual harassment constitutes misconduct on the part of Kuiper. We reverse the district court.

REVERSED.