

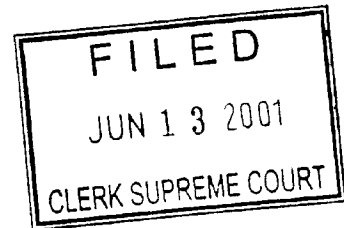
IN THE COURT OF APPEALS OF IOWA

No. 1-193 / 00-1000
Filed June 13, 2001

JAY A. PETERSON,
Petitioner-Appellant,

vs.

**IOWA WORKFORCE DEVELOPMENT
and SHELBY COUNTY PETERSON GAS
CO., INC.,**
Respondents-Appellees.



Appeal from the Iowa District Court for Shelby County, Charles L. Smith,
Judge.

Jay Peterson appeals the district court's ruling on judicial review affirming
the respondent's decision that denied his claim for unemployment benefits.

AFFIRMED.

Robert Kohorst and William Early of Kohorst, Early, Gross & Louis,
Harlan, for appellant.

Anita M. Garrison, Des Moines, for appellee agency.

Richard C. Schenck of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan,
for appellee company.

Heard by Sackett, C.J., and Huitink and Streit, JJ.

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HUITINK, J.

I. Background Facts and Proceedings.

This appeal concerns Jay Peterson's entitlement to unemployment benefits following termination of his employment with Shelby County Peterson Gas Co., Inc. (the corporation). The disputed issue throughout these proceedings is whether Peterson was fired for misconduct that would disqualify him from receiving unemployment benefits.

The corporation protested Peterson's claim for benefits alleging that Peterson was fired for collecting unauthorized personal compensation from the corporation and securing unauthorized bank loans on behalf of the corporation. Peterson denied any impropriety citing his authority as corporate president and history of similar transactions. He also cited prior approval of the personal compensation by the corporation's accountant.

A representative from Iowa Workforce Development awarded Peterson benefits over the corporation's protest. The representative determined Peterson was eligible for benefits because he was laid off for reasons beyond his control. This determination was reversed on appeal to the Unemployment Insurance Appeals Section. The presiding administrative law judge's (ALJ) findings of fact provide:

The claimant as president of the Shelby County Peterson Gas Company, Inc. and as well as officer and director and shareholder of Shelby County Suburbia had a definite duty and obligation to be honest in all respects with the officers, directors and shareholders of both corporations. The claimant had a duty and obligation to report all personal transactions that he had been involved in which affected either corporation. The claimant failed to fulfill that duty and obligation and surreptitiously paid himself wages to which he was not entitled and transferred funds properly belonging to Shelby

County Peterson Gas Company, Inc. to himself as payment for services rendered which were not fully disclosed to the officers, directors and shareholders of the corporation. The conduct of the claimant is deemed a series of deliberate acts and omissions that would constitute a material breach of his duties and obligations to the corporations of which he was an officer, director and shareholder.

Based on these findings the ALJ concluded Peterson was discharged for misconduct and therefore disqualified from receiving unemployment benefits.

The ALJ's decision was subsequently affirmed on Peterson's appeal to the Employment Appeal Board and on judicial review by the district court. In this appeal Peterson contends the Employment Appeal Board's determination that he was terminated for misconduct is not supported by substantial evidence and the district court erred by concluding otherwise.

II. Standard of Review.

Our review of the appeal board's decision is at law. *Green v. Iowa Dep't of Job Serv.*, 299 N.W.2d 651, 655 (Iowa 1980). The decision will be upheld if it is supported by substantial evidence in the record made before the hearing officer when that record is viewed as a whole. *Meyer v. Iowa Dep't of Job Serv.*, 385 N.W.2d 524, 525 (Iowa 1986). Evidence is substantial if a reasonable person would find it adequate for reaching a decision. *Porth v. Iowa Dep't of Job Serv.*, 372 N.W.2d 269, 272 (Iowa 1985). If we determine that the agency's findings of fact are supported by substantial evidence, we are bound by those findings and must affirm. *West v. Employment Appeal Bd.*, 489 N.W.2d 731, 733 (Iowa 1992).

III. The Merits.

Iowa Code section 96.5(2) provides a claimant is disqualified for unemployment benefits "[i]f the division of job service finds that the individual has been discharged for misconduct in connection with the individual's employment." Iowa Administrative Code section 345-4.32(1)(a) defines misconduct:

Misconduct is defined 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 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.

Our supreme court has found that this definition accurately reflects the intent of the legislature. *Reigelsberger v. Employment Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *Kleidosty v. Employment Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Encompassed within the duties and obligations owed to an employer under this definition is the common law duty of loyalty, the breach of which will accordingly constitute misconduct. *Porth*, 372 N.W.2d at 274.

As noted earlier, Peterson argues there was not substantial evidence to support a finding that his termination was a result of misconduct. We disagree.

Peterson's lack of express corporate authorization for withdrawing extraordinary compensation and securing bank loans is not disputed. The

corporation, however, disputed Peterson's claims of tacit corporate approval for the relevant transactions. In resolving the resulting factual disputes against Peterson the Employment Appeal Board cited testimony from the corporation's office manager who reported these transactions as irregularities to the board of directors. The Employment Appeal Board's findings of fact also note Peterson's failure to produce requested documentation justifying the challenged transactions as well as his failure to call the corporation's accountant to corroborate his claim that the accountant approved of these transactions. Additionally, the Employment Appeal Board expressly noted that Peterson's testimony on these issues was not believable. This evidence sufficiently supports the district court's conclusion that Peterson violated his duty of loyalty to the corporation and that he was accordingly terminated for misconduct. The district court properly affirmed the decision of the Employment Appeal Board denying Peterson's application for unemployment benefits.

AFFIRMED.

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