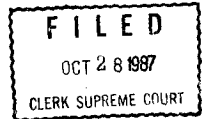


IN THE COURT OF APPEALS OF IOWA



BETTY KLINE,)

Petitioner-Appellant,)

Filed October 28, 1987

vs)

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IOWA DEPARTMENT OF JOB SERVICE)
and IOWA LUTHERAN HOSPITAL c/o)
GATES, McDONALD & COMPANY, and)
EMPLOYMENT APPEAL BOARD,)

7-443
87-370

Respondents-Appellees.)

Appeal from the Iowa District Court for Polk County (AA 4-1084), Rodney Ryan, Judge.

Petitioner appeals a decision of the district court affirming the Appeal Board's determination that she was discharged for misconduct and was not eligible for unemployment benefits. **AFFIRMED.**

Joseph B. Joyce and Michael J. Burdette of Adler, Brennan, Joyce & Steger, Des Moines, for petitioner-appellant.

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

Considered by Donielson, P.J., and Schlegel and Hayden, JJ. Snell, J., takes no part.

PER CURIAM

Petitioner Betty Kline was employed by respondent Iowa Lutheran Hospital as a cook from April 1975 until she was discharged on January 12, 1986, for being tardy. Kline was tardy on January 12, 1986 because she overslept. She had made arrangements to get a wake-up call, but she stated that she was on medication and fell back asleep after the call. Kline had received several written warnings in 1985 and was told on January 3, 1986, that additional tardiness would result in discharge. She had been tardy because of oversleeping, car trouble, and misreading her schedule.

Kline filed a claim for unemployment benefits. A claims deputy allowed her benefits. Iowa Lutheran Hospital appealed. After a hearing, a hearing officer reversed the claims deputy and denied benefits on the ground that Kline was discharged for misconduct. Kline appealed that decision to the Appeal Board. The Board affirmed the hearing officer and denied benefits. Kline then petitioned for judicial review. The district court affirmed the agency's finding that Kline was discharged for misconduct and, pursuant to section 96.5 of the Iowa Code, was not entitled to benefits.

Kline argues that she is not guilty of "misconduct" as defined in 370 Iowa Administrative Code section 4.32(1)(a). She states that her tardiness was not willful or deliberate; she was working different time shifts and days, was in poor health, and was taking medication; she had taken steps so that she would not oversleep. Kline asserts that this does not indicate an intentional or substantial disregard of her employer's interests. She also claims that because there was no present misconduct, her past tardiness could not be considered.

Our standard of review is whether there is substantial evidence in the record, viewed as a whole, to support the agency's action. Iowa Code § 17A.19(8)(f). Having reviewed the record, we conclude that there was substan-

tial evidence to support the Job Service's decision. Kline contends that her actions do not constitute "misconduct" under 370 Iowa Administrative Code section 4.32(1)(a) since, she argues, her conduct was not willful or deliberate. We disagree. In Harlan v. Dep't of Job Serv., 350 N.W.2d 192, 194 (Iowa 1984), the Iowa Supreme Court held that excessive unexcused tardiness constituted misconduct and therefore was grounds for denial of benefits. We believe Harlan is controlling in the instant case. The record contains substantial evidence that Kline had a history of excessive unexcused tardiness. We therefore affirm the decision of the trial court upholding the agency's denial of benefits.

AFFIRMED.