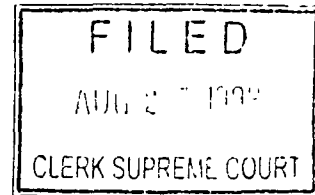


IN THE COURT OF APPEALS OF IOWA

No. 9-115 / 98-704
Filed August 27, 1999



DIANE VAN SICKLE,
Appellant,

**EMPLOYMENT APPEAL BOARD
and AMERICAN REPUBLIC
INSURANCE COMPANY,**
Appellees.

Appeal from the Iowa District Court for Polk County, D. J. Stovall, Judge.

Diane Van Sickle appeals from the district court's affirmance of the Employment Appeal Board's denial of unemployment benefits. **AFFIRMED.**

Robert C. Oberbillig of Legal Aid Society, Des Moines, for appellant.

Mari Thinnes Culver of Duncan, Green, Brown, Langeness & Eckley, P.C.,
Des Moines, for appellee American Republic Insurance.

William C. Whitten, Anita M. Garrison, and Richard R. Ramsey, Des Moines,
for appellee Employment Appeal Board.

Considered by Huitink, P.J., and Streit and Mahan, JJ. Vogel, J., takes no part.

STREIT, J.

Diane Van Sickle appeals the trial court's affirmance of the Employment Appeal Board's denial of unemployment benefits based on misconduct. Because we find Van Sickle's repeated inaccuracies on her time card constituted misconduct under the administrative rules, we affirm.

I. Procedural Background & Facts.

American Republic Insurance Company employed Van Sickle as a senior systems programmer for approximately twelve years. She was terminated on April 8, 1997, for violation of American Republic's policy regarding time cards. All American Republic employees are required to fill out time cards recording start time, break periods, lunch breaks, and the time they leave work at the end of the day. All overtime was to be recorded on the time sheet.

On December 9, 1996, Van Sickle used four hours of vacation that she did not record on her time card. When her supervisor confronted her about not recording the time, she said she made a mistake and corrected her time card. On January 6, 1997, Van Sickle went to a doctor's appointment and recorded she returned to work at 10:15 a.m. when she actually returned at 10:30 a.m. The same day, Van Sickle went to lunch to celebrate a co-worker's birthday but did not record that she took lunch on her time card. When her supervisor confronted her, she changed her time card to reflect the time she had taken. On January 14, 1997, Van Sickle was issued a written

warning because of these incidents. She was informed future violations may result in termination.

On March 28, 1997, Van Sickle was scheduled to work until 12:30 p.m. but left work at 12:00 p.m. On her time card she recorded leaving at 12:15 p.m. As a result of this incident, Van Sickle was discharged. At her discharge meeting, Van Sickle indicated she left at 12:15 p.m. because she worked overtime the previous week that had not been recorded.

The Employment Appeal Board denied Van Sickle's application for unemployment benefits. The decision was affirmed on appeal to an administrative law judge and the Employment Appeal Board. On judicial review, the district court affirmed the denial of benefits on the basis of misconduct. Van Sickle appeals.

II. Standard of Review.

Our standard of review is at law. *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). We will reverse, modify, or grant other appropriate relief only if agency action is affected by error of law, is unsupported by substantial evidence in the record, or is characterized by abuse of discretion. Iowa Code § 17A.19(8) (1997). Our review of agency action is severely circumscribed. Judgment calls are to be left to the agency, and nearly all disputes are won or lost there. *Leonard v. Iowa State Bd. of Educ.*, 471 N.W.2d 815, 815-16 (Iowa 1991).

III. The Merits.

Van Sickle contends the district court erred in affirming the Board's decision because there is no evidence of misconduct. She maintains the incidents in December 1996 and January 1997 were mere mistakes in filling out her time card and that the March 1997 incident was sanctioned because the company told employees to make up for overtime worked by taking time off at the end of the week. Van Sickle also contends the district court erred in affirming the Board's decision not to consider a change in company policy regarding use of comp time.¹

We first address whether the trial court erred in not remanding this case to the Board to consider additional evidence. Iowa Code section 17A.19(7) provides a mechanism for admission of additional evidence following a final agency determination. If the district court finds the additional evidence is material and the party has shown a good reason for not presenting it before the agency, this section requires the court to remand the matter to the agency for a new determination. There are occasions when the matter should be remanded to the agency. *See, e.g., McMahon v. Iowa Dep't of Transp.*, 522 N.W.2d 51, 54 (Iowa 1994).

We review this issue for an abuse of discretion. In order to show an abuse of discretion, one generally must show the court exercised its discretion "on grounds or

¹Van Sickle argues that at the time of the March 28, 1997, incident employees were not required to get approval from a supervisor before using comp time. She asserts the policy was changed by a May 27, 1997, memo written by the personnel department. Van Sickle sought to introduce this evidence for the first time in her appellate brief written for the Employment Appeal Board. The Board refused to consider the memo because Van Sickle failed to show good cause why this information had not been presented at the lower agency level.

for reasons clearly untenable or to an extent clearly unreasonable. *Zenor v. Iowa Dep't of Transp.*, 558 N.W.2d 427, 431 (Iowa App. 1996). Van Sickle presented no arguments to the Board or the district court establishing good cause for not presenting the memo at an earlier point in the administrative hearings. Under such circumstances, the district court did not abuse its discretion in affirming the Board's decision not to consider the additional evidence.

We next consider whether the trial court erred in affirming the Board's decision to deny Van Sickle benefits based on misconduct.

A claimant is disqualified for unemployment benefits "[i]f the department (of workplace development) finds the individual has been discharged for misconduct in connection with the individual's employment." Iowa Code § 96.5(2) (1997). An employer has the burden of proving a claimant is disqualified for benefits because of misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

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.

We have said misconduct must be substantial to justify a denial of unemployment benefits. *Breithaupt v. Employment Appeal Bd.*, 453 N.W.2d 532, 535 (Iowa App. 1990) (citations omitted).

The evidence shows Van Sickle repeatedly had inaccuracies on her time cards that, although minor, were intentionally entered. Within four months she had inaccuracies four times. She had received verbal and written warnings, yet despite such warnings, inaccurately reported the time she left work on her time card a fourth time. An employer has a great interest in the timeliness of its employees and in having its employees accurately report the time they work and time they leave. American Republic has the right to expect its employees to accurately report their time. Van Sickle's repeated disregard of this interest, despite numerous warnings, showed an intentional and substantial disregard of American Republic's interests.

Based on the entire record, we hold sufficient evidence is present to constitute misconduct under section 345-4.32(1)(a). The district court decision upholding the agency's denial of benefits is affirmed.

AFFIRMED.

000299