



IN THE COURT OF APPEALS OF IOWA

LLOYD H. WENMAN,

)

Petitioner-Appellant,

)

vs.

)

IOWA DEPARTMENT OF JOB SERVICE )  
and D & W IOWAN ENTERPRISES,

)

Respondents-Appellees.

Filed March 9, 1988

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Appeal from the Iowa District Court for Johnson County (49929), Larry  
J. Conmey, Judge.

Claimant appeals the district court decision affirming the findings of  
the Iowa Department of Job Service that the claimant had been terminated  
from his job for misconduct. **AFFIRMED.**

Mark L. Hill of Legal Services Corporation of Iowa, Des Moines, for peti-  
tioner-appellant.

Blair H. Dewey and William C. Whitten, Des Moines, for respondent-appellee  
Iowa Department of Job Service.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

**SCHLEGEL, J.**

The claimant, Lloyd H. Wenman, appeals the district court decision affirming the findings of the Iowa Department of Job Service that the claimant had been terminated from his job for misconduct. The claimant argues that: (1) he left his job for good cause attributable to his employer; (2) his conduct in leaving work to be at his mother-in-law's death bed was not misconduct; (3) the Iowa Department of Job Service erred in finding misconduct in an incident that took place two days before the incident that caused the discharge; and (4) the Iowa Department of Job Service's failure to make specific reasoned findings of credibility requires a remand.

On September 2, 1985, Lloyd Wenman was informed that his mother-in-law was near death at a nursing home. Wenman was a night janitor at a McDonald's restaurant. Wenman called in that he would not be at work September 2. The employer contacted Wenman at home that night, where he was asleep. Wenman received a warning and was told to report to work.

On September 5, 1985, the mother-in-law was again near death and Wenman told his manager he might have to leave work early to attend to his dying mother-in-law. Wenman requested a phone number in order to call a manager to come to the store if he should need to leave early. The manager refused to give him the number and told Wenman to wait until the morning manager arrived. Wenman indicated that he would leave anyway and the manager subsequently terminated him.

On October 13, 1985, Wenman filed for unemployment benefits. The Iowa Department of Job service claims deputy found that Wenman had been terminated for nondisqualifiable reasons. On appeal, a hearing officer determined that Wenman had been terminated for misconduct and thus, was properly disqualified from benefits. Before the Appeal Board, the findings of fact were modified,

but affirmed that Wenman had been terminated for misconduct. Wenman filed for judicial review and the district court sustained the Iowa Department of Job Service's finding that Wenman was disqualified on the basis of misconduct. This appeal followed.

Our scope of review is governed by Iowa Code section 17A.19. The district court may grant relief from the agency action upon grounds stated in section 17A.19(8) of the Iowa Code. Our duty is to correct errors of law made by the district court. Mathis v. State Conservation Comm'n, 369 N.W.2d 435, 437 (Iowa 1985). The court will adopt the fact findings of the Iowa Department of Job Service where they are supported by substantial evidence. See Temple v. Vermeer Mfg. Co., 285 N.W.2d 157, 160 (Iowa 1979). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. See Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986).

We find the facts articulated by the Iowa Department of Job Service to be supported by substantial evidence in the record when viewed as a whole. In order to disqualify a person from unemployment benefits, it must be established that the claimant was terminated for misconduct. See Iowa Code § 96.5(2) (1987). The Iowa Administrative Code defines "misconduct" 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.

345 Iowa Administrative Code § 4.32(1). Furthermore, the discharge from employment must be due to a "current" act. See 345 Iowa Administrative Code § 4.32(8). The Code does not require that termination be based on the "last" act. The claimant argues that he was dismissed due to the September 5 incident and that his disqualification from benefits cannot be based on the September 3 incident because it was a past action and cannot support a disqualification unless misconduct occurs again. See Brown v. Iowa Dep't of Job Serv., 367 N.W.2d 305, 307 (Iowa App. 1985).

We believe that the September 3 incident regarding the claimant's misrepresentation to his employer does constitute misconduct. Wenman intentionally misrepresented his reason for not reporting to work on September 3. This act evinces a "willful or wanton disregard of [Wenman's] employer's interest" such that it is a deliberate "disregard of standards of behavior which the employer has the right to expect of employees . . . ." See 345 Iowa Admin. Code § 4.32(1). In addition, the September 5 incident was also misconduct as a matter of law. The evidence indicates that the claimant was terminated for insubordination following shortly after the misrepresentation on September 3. The insubordination occurred on September 5 when Wenman told his employer he would leave the restaurant unattended if called to the nursing home, even after the employer had instructed him to wait for the opening manager to come in before leaving. Such behavior is again a willful disregard of the employer's interest. This action, when viewed along with the misconduct of September 3, constitutes a course of misconduct sufficient to conclude that the claimant was terminated for a "current" act of misconduct. Thus, there are proper grounds for disqualification from benefits.

Wenman also argues that this case should be remanded to the Iowa Department of Job Service for a specific finding regarding the credibility of witnesses.

Such a finding, the claimant argues, is necessary to make judicial review meaningful. We agree with the district court that this argument is without merit. The evidence supports the agency's implicit finding regarding credibility. It is not necessary for the Iowa Department of Job Service to have expressly stated whose testimony was believed and why. Such conclusions can be implied from the agency's decision.

Based on the foregoing, we affirm the district court and the Iowa Department of Job Service's conclusion that the claimant was properly denied benefits.

**AFFIRMED.**