IN THE COURT OF APPEALS OF IOWA

No. 9-675 / 89-1091

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CLERK SUPREME COURT

158

**MICHAEL D. MUNDY,**

Appellant,

vs.

**YOUNKERS, INC.,** and **IOWA DEPARTMENT OF JOB SERVICE,**

Appellees.

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Appeal from the Iowa District Court for Polk County, Michael Streit, Judge.

Appellant appeals the decision of the district court upholding the decision of the Employment Appeal Board. **AFFIRMED.**

William C. Whitten and I. John Rossi, Employment Appeal Board, for appellees.

David M. Keenan, Des Moines, for appellant.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

**HABHAB, J.**

Appellant, Michael D. Mundy, appeals the decision of the district court upholding the decision of the Employment Appeal Board. Appellant argues that the agency erred as a matter of law in concluding that his actions constituted misconduct.

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 Comm'n, 348 N.W.2d 619, 621 (Iowa 1984). Our review of the district court's decision is limited to correction of errors at law. Roberts v. Iowa Dep't of Job Serv., 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 Hosp. v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982).

We find substantial evidence for the following findings of fact. Appellant was employed as a stock worker by appellee from April 16, 1985, to May 20, 1988. Pursuant to

his employment, appellant was to sign his time sheet upon his arrival and departure from the work place.

On May 6, 1988, appellant signed his time sheet indicating arrival at 8:00 a.m. and a departure of 3:00 p.m. Due to a family emergency, however, appellant left work that day at 2:10 p.m. without amending his time sheet to indicate his premature departure from appellee's premises. On May 9, 1988, appellant received a written warning from appellee concerning his listing of the incorrect departure time on his time sheet. Nevertheless, and again on May 10, 1988, and May 13, 1988, appellant left his work area early, and notwithstanding his warning, he signed his time sheet indicating his departure time as his usual quitting time, to-wit: 3:30 p.m. Upon learning of these two early departures by appellant, appellee terminated appellant's employment.

After his discharge, appellant filed a claim for unemployment benefits. A claims deputy found appellant's actions failed to constitute misconduct. A hearing officer reversed, and that decision was affirmed upon a divided vote of the Employment Appeal Board. Appellant then sought judicial review of the Board's decision. The district court affirmed the decision of the Board. This appeal then followed.

Misconduct, such as to render an employee ineligible for unemployment compensation, 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 state.

Iowa Admin. Code § 345-4.32(1)(a). We find that repeated early departures from work and the misrepresentation of that fact on an employee's time card or sheet gives rise to misconduct on the part of the employee.

Turning to the record before us, we find the Board's decision that appellant had engaged in misconduct to be supported by substantial evidence. Appellant was warned about the importance of properly filling out his time sheet following the May 6th incident. Nonetheless, appellant left work early on both May 10 and 13 and either falsified or failed to correct his time sheet for the day. Appellant claimed that the clocks at the work place varied and that accounts for his early departure. However, as the concurring opinion of the Employment Appeal Board noted, appellant was fully aware of the discrepancies between the

various clocks and knew that the office clock was the appropriate clock for record purposes. As such, we find substantial evidence to support the agency's finding that appellant's actions were in deliberate violation of the standards of conduct which appellee had a right to expect and that such conduct evidences a disregard for both his duties and appellee's interests.

**AFFIRMED.**