

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

HOMADI R. HUSSEIN,)

Petitioner-Appellant,)

vs.)

TAMA MEAT PACKING CORPORATION,)
and IOWA DEPARTMENT OF JOB)
SERVICE,)

Respondents-Appellees.)

Filed April 23, 1986

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85-849

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Appeal from the Iowa District Court for Linn County (No. LA 12618)
William L. Thomas, Judge.

Petitioner appeals the district court's affirmance of the Job Service decision denying his unemployment benefits on the ground of misconduct in throwing a beef tongue at his superior who twice denied his urgent need to go to the restroom. **REVERSED.**

David G. Challed of Challed Law Offices, Cedar Rapids, for petitioner-appellant.

Walter F. Maley, Blair H. Dewey and Joseph L. Bervid, of Iowa Department of Job Service, Des Moines for respondent-appellee Iowa Department of Job Service.

Thomas M. Wertz of Tom Riley Law Firm, Cedar Rapids, for respondent-appellee Tama Meat Packing Corporation.

Heard by Donielson, P.J., and Snell and Sackett, JJ.

SNELL J.

Claimant Homadi R. Hussein was employed as a meat trimmer by Tama Meat Packing Corporation from June 6, 1982, until his discharge on August 1, 1983. On July 28, 1983, an hour to an hour and fifteen minutes after lunch break, Hussein was trimming meat in the kill room. The kill room supervisor, Daniel Praizek, was cleaning up tripes or meat trash across the room from where Hussein was working. Hussein asked Praizek for immediate permission to go to the rest-room. He could not leave his work station unattended and Praizek would have to take over his position. Praizek told Hussein that he would be over as soon as he finished cleaning. Hussein waited about ten minutes, then renewed his request, conveying the urgency of his physical need. Praizek once again refused to take over Hussein's work station, laughed at Hussein and turned back to his cleaning. At this point, Hussein threw a piece of meat tongue at Praizek, which hit him in the foot. Unable to obtain Praizek's attention and unable to deny his physical need any longer, Hussein left his work station and went to the rest-room. He was absent from the kill room for only two minutes. When Hussein returned to his work station, Praizek was trimming meat and told Hussein to shower and go home. Hussein was fired for throwing the meat at Praizek.

When Hussein applied for unemployment benefits, a Claims Deputy for the Iowa Department of Job Service issued a decision on August 12, 1983, finding Hussein eligible for unemployment benefits because Tama failed to establish any willful or deliberate misconduct in connection with his work. Tama appealed this initial decision and after a telephone hearing, the hearing officer reversed the Claims Deputy's decision on the ground that Hussein's act of throwing meat at his supervisor constituted disqualifying misconduct.

The hearing officer also found that Hussein had demonstrated a pattern of improper behavior which was contrary to his obligations and responsibilities

to his employer. In this regard, the agency relied on the fact that Hussein had received a warning for fighting with another employee on February 5, 1983, and was suspended for three days for arguing with the same employee on July 11, 1983. Hussein testified that the other employee provoked the arguments by throwing blood, water, and meat on Hussein while he was trying to work. Hussein made numerous complaints to their supervisor about this employee to no avail. Both employees received the same reprimand for their conduct and were told that any further fighting incidents would result in their termination.

The Appeal Board affirmed the hearing officer's decision with one dissenting opinion, and denied Hussien's application to submit new evidence. Hussein filed a petition for judicial review and the district court found that substantial evidence supported the agency's determination of misconduct. The court stated that the throwing of any object at a supervisor with the intent to strike him and the supervisor is struck is misconduct.

On this appeal, Hussein asserts that the district court erred in finding that the agency's finding of disqualifying misconduct is supported by substantial evidence. He contends that there is no showing of willful and deliberate behavior on his part, and that throwing the meat was merely a spontaneous response to the combination of the persistent physical need to go to the restroom and his supervisor's unreasonable denial of permission to leave the kill room.

Our scope of review in cases arising out of the Iowa Administrative Procedure Act is limited to the correction of errors of law. Budding v. Iowa Dept. of Job Service, 337 N.W.2d 219, 221 (Iowa Ct.App. 1983). We review the decision of the district court, also rendered in an appellate capacity, and determine whether the district court correctly applied the law. Endicott v. Iowa Dept. of Job Service, 367 N.W.2d 300, 302 (Iowa Ct.App. 1985). "In order to make that determination, this court applies the standards of section 17A.19(8) to the agency action to

determine whether this court's conclusions are the same as those of the district court." Jackson County Public Hospital v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). Iowa Code section 17A.19(8) provides that in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole. Evidence is substantial when a reasonable person would accept it as adequate to reach a conclusion. Gipson v. Iowa Dept. of Job Service, 315 N.W.2d 834, 837 (Iowa Ct.App. 1981). We do not question the employer's right to terminate Hussein's employment. Our sole task is to determine whether he is entitled to unemployment benefits. Billingsley v. Iowa Dept. of Job Service, 338 N.W.2d 538, 540 (Iowa Ct.App. 1983).

Iowa Code section 96.5(2) provides that an individual is disqualified for unemployment benefits if Job Service finds that the individual has been discharged for misconduct in connection with the individual's employment.

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.

370 Iowa Admin. Code § 4.32(1)(a). This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntton

v. Iowa Dept. of Job Service, 275 N.W.2d 445, 448 (Iowa 1979) cert. den., 444 U.S. 852 (1979). The employer has the burden of proving misconduct. 370 Iowa Admin. Code § 4.32(4); Billingsley, 338 N.W.2d at 540.

In order to establish misconduct that will disqualify an employee from benefits, the employer must prove conduct by the employee consisted of deliberate acts or omissions or evinced such carelessness as to indicate a wrongful intent. Billingsley, 338 N.W.2d at 540. The misconduct, in order to support a disqualification from unemployment benefits, must be substantial. Newman v. Iowa Dept. of Job Service, 351 N.W.2d 806, 808 (Iowa Ct.App. 1984); Budding, 337 N.W.2d at 222. "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." Newman, 351 N.W.2d at 808. The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. Id. While the discharge must be based on a current act of misconduct, past acts of misconduct may be considered in determining the magnitude of the current act. 370 Iowa Admin. Code § 4.32(8).

In this case, Hussein was discharged for throwing a piece of meat at his supervisor's feet after his supervisor twice refused to cover Hussein's work station so that he could relieve himself. There is no dispute in the record regarding the urgency of Hussein's physical need. It is also undisputed that Praizek was at all times capable of spelling Hussein for the two minutes he needed to absent himself from the meat line. We cannot, in these specific circumstances, agree with the Department's conclusion that Hussein's response to Praizek's denial constitutes disqualifying misconduct within the meaning of our unemployment compensation law.

There are several reasons underlying our conclusion: (1) Hussein's act came about as the result of Praizek's unreasonable denial of permission to go to the

restroom; (2) Hussein's response was an unthinking, spontaneous expression of frustration; (3) whatever physical violence inhered in Hussein's act was minimal in nature; (4) Hussein did not intend to injure and did not, in fact, inflict injury; and (5) the event occurred in an environment where decorous behavior is not the rule.

We should not be understood as condoning violence in any degree. While Hussein's response was clearly an error in judgment, we cannot say that it evinced a "willful or wanton disregard" of his employer's interests. No one contends that Hussein intended to injure Praizek when he threw the meat. In fact, from Praizek's testimony, it appears that he was not even aware that Hussein had thrown the meat in his direction until he happened to glance around and noticed Hussein had left the room.

We find this is an unusual and isolated incident of relatively minor import and conclude that it falls within the category of a mere mistake or misjudgment rather than disqualifying misconduct.

REVERSED.