

FILED

MAR 20 1984

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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JACK M. BOYD,	)	Filed March 20, 1984
Petitioner-Appellant,	)	
vs.	)	<u>4-65</u>
		<u>83-868</u>
IOWA DEPARTMENT OF JOB SERVICE	)	
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Polk County—James P. Denato,
Judge.

Petitioner appeals from the district court decision on judicial review
affirming the decision of respondent-agency disqualifying him from receipt of
unemployment benefits. REVERSED AND REMANDED.

Frank Murry Smith, Des Moines, for petitioner-appellant.

Blair H. Dewey, Des Moines, for respondent-appellee.

Heard by Oxberger, C.J., and Hayden, and Sackett, JJ.

Petitioner appeals from the district court decision on judicial review affirming the decision of respondent-agency disqualifying him from receipt of unemployment benefits. We reverse and remand.

I. Scope of Review

Our review of agency action is governed by Iowa Code section 17A.19(8). We may reverse agency action if it is "unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole." Iowa Code § 17A.19(8)(f). Evidence is substantial when a reasonable mind would accept it was adequate to reach a conclusion. City of Davenport v. Public Employment Relations Board, 264 N.W.2d 307, 311 (Iowa 1978). Our review is not de novo. On appeal from the district court's decision affirming the denial of unemployment benefits, our review is limited to a determination of whether the district court made errors of law when it exercised its authority to review the agency action. Woods v. Iowa Department of Job Service, 315 N.W.2d 838, 840 (Iowa Ct. App. 1981).

II. Unemployment Benefits

Jack Boyd was disqualified from receiving unemployment benefits because he was discharged from his job for misconduct. See Iowa Code § 96.5(2)(a). The Iowa Department of Job Service has interpreted "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 I.A.C. 4.32(1)(emphasis added). In order to support a disqualification from unemployment benefits, the misconduct must be substantial. Budding v. Iowa Dept. of Job Service, 337 N.W.2d 219, 222 (Iowa Ct. App. 1983). Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits. Id. at 222.

In the present case, Swift Company rules required petitioner, Boyd, to obtain permission from his supervisor before leaving his line to go to the bathroom. When Boyd could not locate his supervisor at such a time, he asked permission from another supervisor who had no authority in petitioner's area; he ultimately left the line briefly to go to the bathroom when he believed that he had been relieved by another employee. At the end of work Boyd's supervisor informed him that he was being suspended for three days for going to the bathroom without permission. As he left the area, Boyd refused to return to sign an acknowledgment of the suspension and made a comment, overheard by another supervisor, referring to his own supervisor in profane language. Boyd was thereafter discharged for this behavior on the basis that "he had been insubordinate, regarding the profanity and the leaving of the meeting prior to its conclusion."

It is unreasonable to expect employees to be entirely docile and well mannered at all times. Id. at 222. Boyd was upset after given what he considered to be an unfair suspension. He called his supervisor a "bastard" under his breath; but for a fellow supervisor accidentally overhearing, no one was even aware of the remark. Coupling the profanity with the fact that Boyd left the meeting with his

supervisor before its conclusion and without signing an acknowledgement, we still¹¹
do not find the misconduct to be substantial. See Budding at 222.

Except for one unexcused absence for not bringing a doctor's verification when he was ill, Boyd's work record was void of any disciplinary measures. Even though Boyd should have come back into Mike Robertson's office when requested to do so and should not have used profanity under his breath, this incident was isolated. There is no evidence that Jack's conduct had been anything but satisfactory prior to this time. Furthermore, Jack was under an honest impression that the procedures he used to leave for the restroom were allowable. Under these circumstances, we can understand why he believed he was being unfairly suspended.

While we do not condone vulgarity nor the refusal to obey a supervisor's command outside of the work area, we do not view this one instance as evincing "willful or wanton disregard of an employer's interest."

Therefore, we find that the district erred in deciding that misconduct was shown as a matter of law.

REVERSED AND REMANDED FOR ENTRY OF JUDGMENT.