IN THE COURT OF APPEALS OF IOWA

FILED
JUN 26 1997
CLERK IN DISTRICT COURT

No. 6-481 / 95-1916

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LUE M. BIGGLES,
Petitioner-Appellee,

vs.

EMPLOYMENT APPEAL BOARD,
Respondent,

and

POWERS MANUFACTURING COMPANY,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

The respondent employer appeals from the district court's ruling on judicial review reversing the respondent-board's determination that the petitioner was disqualified from receiving unemployment benefits. **REVERSED.**

Beth E. Hansen of Swisher & Cohrt, P.L.C., Waterloo, for appellant employer.

William Whitten, Des Moines, for board.

Van Tran, Waterloo, for appellee.

Heard by Huitink, P.J., and Streit and Vogel, JJ.

STREIT, J.

Respondents Employment Appeal Board (Board) and Powers Manufacturing Company (Powers) appeal the decision of the district court reversing the agency's decision denying unemployment benefits to a worker discharged for quarreling. We reverse.

Lue Biggles was employed by Powers Manufacturing Company for over twenty years. In November 1993, Biggles was the subject of disciplinary action. At that time, she met with supervisors and was provided with a copy of the employer's rules stating that fighting was grounds for immediate termination.

On November 15, 1994, on company property, Biggles and a co-worker, Elizabeth Jenkins, had an argument after Biggles' refused Jenkins a ride to lunch. When Biggles returned to work, Jenkins confronted Biggles in the lunch room. Jenkins was verbally abusive and profane. Biggles used offensive language. As the argument continued onto the work floor, a supervisor heard Biggles challenge Jenkins to fight: "We can throw down if you want to." The supervisor ordered them to stop and go back to work. Jenkins persisted in her truculent behavior. The supervisor directed both women to the manager's office.

The spat continued in the office. The women were asked to remain quiet. Jenkins taunted Biggles about her and her daughter. She made threats. Biggles responded to Jenkins. Jenkins threatened to "whip her [Biggles'] ass." Both

employees were sent home. Powers fired Biggles and Jenkins for misconduct the next day.

Biggles sought unemployment compensation. Powers disputed the claim. In February 1995, after a hearing, the administrative law judge denied unemployment benefits. Biggles appealed to the Employment Appeal Board. The Board affirmed the administrative law judge and added the following reasoning in support of the decision: " . . . separate instances of bad conduct can be compounded to arrive at a finding of misconduct." *See Carpenter v. Iowa Dep't of Job Service,* 401 N.W.2d 242 (Iowa App. 1986).

Biggles appealed the Board's decision to the district court. The district court reversed the decision of the agency stating that although it "took no issue" with the administrative law judge's findings of fact, it disagreed with the conclusions of law reached by the agency. The court opined that Jenkins was the aggressor in the exchange and that she was an "assaultive and offensive person." The district court referred to Biggles as the "victim" and further noted the conflict never "reached the physical stage." The court directed the agency to pay unemployment benefits to Biggles and taxed the costs of the action to the employer and the Board.

Powers appeals the decision of the district court asserting Biggles' actions constituted misconduct as a matter of law. It further argues the record contains substantial evidence supporting the Board's factual findings and conclusions of law.

I. Scope of Review. The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. *Id.*

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. *Eaton v. Iowa Dep't of Job Serv.*, 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. *Id.* at 917; *Varied Enterprises, Inc. v. Sumner*, 353 N.W.2d 407, 409 (Iowa 1984).

II. Misconduct. Powers disputes the district court's finding that as a matter of law Biggles' actions did not constitute misconduct and benefits should not be denied. Iowa Code section 96.5(2) (1993) provides that a claimant is disqualified for benefits if the employment appeal board finds the individual has been discharged for misconduct. *See Henecke,* 533 N.W.2d at 575 (citations omitted). Misconduct is defined by Iowa Administrative Code r. 345-4.32(1) (1988) 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 a 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.

See also Fairfield Toyota, Inc., v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989) (citation omitted).

Powers' work rules prohibit the use of abusive, profane, lewd, or lascivious language. It is undisputed Biggles took part in a heated exchange with a fellow employee, Jenkins, and used offensive language. Biggles used the expression "nigger, please" and offered to "throw down" in response to Jenkins' abusive and profane remarks toward Biggles. Testimony reveals after a supervisor ordered them to stop, Biggles and Jenkins failed to follow the instruction and continued to engage in conflict. They were taken to the manager's office. Finally, the manager of Powers sent Biggles and Jenkins home because they would not stop arguing.

The Employment Appeal Board found in its decision:

> The employer does have a right to demand harmony in the work place. In the matter under review, the claimant was told on several occasions she was to cease arguing and quarreling with another employee, but the claimant disregarded these directives and continued quarreling with the

> other employee. This behavior does show a willful and wanton disregard of the employer's interest and is misconduct within the meaning of Iowa Code section 96.5-2-a and as above described. Accordingly, it is held the claimant was discharged from her employment because of misconduct in connection with the employment and the claimant is not entitled to receive unemployment insurance benefits. The disqualifying decision of the representative is correct and shall be affirmed.

The district court found Biggle's inability to be quiet when she was repeatedly harassed, threatened, and insulted cannot as a matter of law be misconduct. We find the situation which arose between Biggles and Jenkins cannot be determined as a matter of law. This case involved an argument on the brink of a physical fight. We must look at the facts and circumstances to determine whether misconduct existed. We determine there was substantial evidence to support the Board's finding there was misconduct.

I. Denial of Benefits. Misconduct which may warrant a discharge does not necessarily justify a denial of unemployment benefits. *Diggs v. Employment Appeal Bd.,* 478 N.W.2d 432, 434 (Iowa App. 1991); *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 734 (Iowa App. 1986). An employer has the burden of proving a claimant is disqualified for benefits because of misconduct. *Myers v. Employment Appeal Board,* 462 N.W.2d 734, 737 (Iowa App. 1990). The misconduct must be substantial in nature to support a disqualification from unemployment benefits. *Id.*

Biggles argues she should not be denied benefits for an isolated incident of misconduct where she was provoked and was the victim. In order to be disqualified from benefits for a single incident of misconduct, the misconduct must be a deliberate violation or disregard of standards of behavior which the employer has a right to expect of employees. *Henry,* 391 N.W.2d at 736.

Powers argues the record contains other evidence supporting the agency's factual findings and denial of benefits for misconduct. Powers emphasizes that Biggles had been the subject of previous disciplinary action for fighting on company premises in violation of a known work rule. At that time, she was provided with a copy of the rules. She received a written warning indicating further conduct of this nature could result in termination.

Although Biggles may argue a different inference may be drawn from the record, the district court was not free to interfere with the agency's findings of fact. *See Sioux City Brick v. Employment Appeal Board,* 469 N.W.2d 256 (Iowa App. 1991). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. *Henry,* 391 N.W.2d at 734. The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. *Id.*

The district court stated it "took no issue" with the findings of fact, rather it disagreed with the conclusions of law and found Biggles was the "victim" so benefits

should not be denied. It is not for the trial court or this court to decide who started the argument. Biggles may have been the victim, but she was also a participant.

Biggles argues there was not much harm done by the argument and no physical fight broke out. The fact no physical fight resulted and no one was physically hurt does not mean the misconduct was not substantial in nature to support disqualification of benefits. The employer should be able to expect harmony in the workplace. The potential for physical injuries to the workers involved in an argument and to other non-involved workers is something an employer must protect against.

The employer has a significant burden to show the misconduct of the claimant rises to the level of a willful or wanton disregard of her employer's interest. *Diggs,* 478 N.W.2d at 434. We conclude the employer in this case has satisfied this burden. We find there is substantial evidence supporting the Board's decision. Accordingly, we reverse the decision of the district court reversing the agency's denial of unemployment benefits.

REVERSED.

Vogel, J., concurs; Huitink, P.J., dissents.

HUITINK, J. (dissenting)

I respectfully dissent. Although the majority acknowledges the distinction between conduct justifying termination and disqualifying misconduct, they fail to recognize its applicability in this case. *See Diggs v. Employment Appeal Board,* 478 N.W.2d 432, 434 (Iowa App. 1991); *Henry v. Iowa Dep't of Job Service,* 391 N.W.2d 731, 734 (Iowa App. 1986). Moreover, the district court's determination that Biggles' behavior was not disqualifying misconduct as a matter of law was well within the scope of judicial review. *Richers v. Iowa Dep't. Of Job Service,* 479 N.W. 308, 311-12 (Iowa 1991) (where court held employee's poor performance was not misconduct as a matter of law); *Harlan v. Iowa Dep't of Job Ser.,* 350 N.W.2d 192, 193 (Iowa 1984) (misconduct can only be determined as a matter of law when there is no dispute about the facts or the inferences to be drawn from them); *Fairfield Toyota, Inc. v. Bruegge,* 449 N.W.2d 395, 397 (Iowa App. 1989) (the failure to show that misconduct existed as a matter of law is a basis for reversing the denial of unemployment benefits).

I believe a denial of benefits in this case conflicts with, rather than advances, the fundamental objectives of Iowa's unemployment compensation scheme. *See* Iowa Code § 96.2; *see also Dirksen v. Employment Appeal Bd.,* 477 N.W.2d 381, 382 (Iowa 1991) (Iowa courts interpret the Employment Security Law liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment). I would affirm the district court.