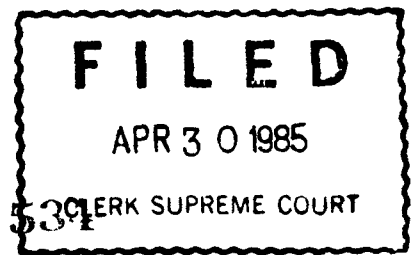


IN THE COURT OF APPEALS OF IOWA



MICHAEL A. WALKER,

)

Petitioner-Appellee,

)

Filed April 30, 1985

vs.

)

5-109
84-1283

IOWA DEPARTMENT OF JOB SERVICE and)
LAURIDSEN FOODS, INC.

)

Respondents-Appellants.

)

Appeal from the Iowa District Court for Kossuth County, Tom Hamilton,
Judge.

Respondents appeal from the district court reversal of the Job Service
decision disqualifying petitioner's unemployment benefits. AFFIRMED.

Ray Cebula of Legal Services Corporation, for petitioner-appellee.

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

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

OXBERGER, C.J.

The trial court reversed the decision of the Iowa Department of Job Service appeal board, and determined the finding of misconduct resulting in denial of unemployment benefits was not supported by substantial evidence. We agree and affirm the trial court ruling.

The claimant, Michael Walker, worked for Lauridsen Foods, Inc., from October 1981 to October 3, 1983, as a ham defatter. His job was to remove the fat from hams as they passed down a conveyor belt. On October 1, 1983, his supervisor, who was standing behind him, saw Walker push a ham from the conveyor belt he was working on onto a conveyor belt which would have taken the ham to the animal rendering plant. The value of a processed ham is about \$2.50 per pound, and if the ham had gone to the rendering department, it would have been worth only 15 cents per pound. Walker told the job service officers he was falling behind in defatting hams and pushed it onto the fat conveyor belt to catch up. He also claimed he yelled at another employee to catch the ham, but no other employee heard him. Instead, the supervisor removed it before the ham went onto the plant. The supervisor claims he never heard Walker yell at anyone to remove the ham. Walker was suspended, and fired two days later.

The claims deputy determined that Walker was qualified for unemployment benefits, but that decision was reversed by an administrative hearing officer. The board affirmed a finding of misconduct, and a rehearing was denied. The district court found there was insufficient evidence to find misconduct and reversed.

Our position on review is like that of the trial court's; we are to decide if there is substantial evidence supporting the agency decision. Iowa Code § 17A.19(8)(f)(1985). Substantial evidence is that which a reasonable person would find adequate for reaching a conclusion. Peoples Memorial Hospital v. Iowa Civil Rights Commission, 322 N.W.2d 87, 91 (Iowa 1982).

In determining if the claimant is guilty of misconduct which would warrant denial of unemployment benefits, we again turn to the definition in our administrative code at section 370-4.32(4), which indicates it involves a deliberate, volitional disregard of the standards which the employer has a right to expect, or which is so careless as to manifest a bad intent on the part of the employee. The act must also constitute a material breach of the duties arising out of the contract of employment. Id. We have emphasized that the misconduct must be substantial. Budding v. Iowa Department of Job Service, 337 N.W.2d 219, 222 (Iowa Ct. App. 1983). The burden is upon the employer to show misconduct occurred. Iowa Administrative Code § 370-4.32(4)(1983).

The department claims that since Walker had worked at the company for two years as a ham defatter, he was well aware of what he was doing. The supervisor claims he never heard Walker shout at anyone to retrieve the ham. Further, a sign posted prominently at the plant indicates that employees cannot destroy the employer's property. The department also claims an Idaho case is on point, where an employee was found to have shown misconduct when he threw a metal shackle and chain into a shredding machine scrap barrel, hoping another employee would remove it. Rasmussen v. Gem State Packing Co., 83 Idaho 198, 201, 360 P.2d 90, (1961)(overruled on other grounds at Parker v. St. Marie's Plywood, 101 Idaho 415, 614 P.2d 955 (1980)).

The claimant points out he had been transferred to a different line with a faster conveyor belt just one week before the incident. He had a good record at the plant, and had never been warned or reprimanded in the past. Walker further says he had seen other employees do the same thing when they were behind. Walker says he was told by the employer's Chief Administrative Officer, Bill Tatum, that it was proper procedure to temporarily put a ham on the rendering line until the person transferred to the new line adapted to the speed. Tatum reinforced this in his own testimony:

I would like to clarify this statement that he is making. All—we had just installed a new conveyor on the boning lay out and through the process of—of making the changes I did not state that they specifically do that or they were instructed to do this I told you that there was a possibility that they might have let some of the hams go by on the conveyor during the first week. But nobody was instructed to do this. But they—they had tolerated it—(inaudible) tolerate it the first week while everyone was getting trained.

We believe the actions of Walker can be best characterized as a good faith error or mistake. Such actions are specifically exempted in our Code from the definition of misconduct. Iowa Administrative Code § 370-4.32(4)(1983). The employer admits the specific act which it claims constitutes misconduct was tolerated by the employer and apparently was at times encouraged. Walker was justified in relying on the representations of the administrative officer, and his acts cannot be characterized as a deliberate violation in disregard of the employer's interests.

Even if this act could be characterized as misconduct, we cannot agree that it was substantial. It involved an isolated incident with minimal pecuniary loss. The department claims such a finding would indicate that an employee can violate company policy whenever there is no immediate pecuniary loss. That is not within the scope of our holding today. We merely indicate that an isolated incident, where no loss is suffered, and any threatened pecuniary loss would have been minimal, and where the employee relied on the representations of the employer that the conduct was allowed, there is no misconduct.

We are unpersuaded that the Idaho case is on point. In that instance, throwing a 29 pound shackle and chain into the machine created a highly dangerous situation and would have rendered several tons of equipment worthless. Id. at 201-02, 360 P.2d at 91-92. In addition, the employee was well aware such actions would not be tolerated. Id. at 203-04, 360 P.2d at 93. That is considerably different from the fact situation here.

AFFIRMED.