IN THE COURT OF APPEALS OF IOWA

No. 5-631 / 95-0626

FILED
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CLERK SUPREME COURT

CAMDEN AMUSEMENT & VENDING, INC.,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD.

Appellee.

Appeal from the Iowa District Court for Linn County, August F. Honsell, Judge.

The employer appeals the district court's decision affirming the conclusion of the Employment Appeal Board that an employee had not engaged in misconduct and was entitled to unemployment benefits. **AFFIRMED.**

Richard D. Raymond, Cedar Rapids, for appellant.

William C. Whitten and Joe E. Smith, Employment Appeal Board, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

PER CURIAM

This is an appeal by an employer claiming a former employee committed misconduct and was not entitled to unemployment benefits. The district court affirmed the decision of the Employment Appeal Board granting benefits. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Donald Goodwin was employed by Camden Amusement & Vending, Inc., a company which serviced vending machines. For his route, Goodwin used company keys for the vending machines. On Friday, June 24, 1994, he accidentally took these keys home with him. All dates in this case are in 1994. Goodwin did not return to work the next week because of a shoulder injury.

Goodwin's supervisor, Lee Timm, called and asked for the keys on June 29 and June 30. Goodwin was unable to find the keys, and deduced his girlfriend had mistakenly taken them. Goodwin called his girlfriend, who in turn called Timm. Timm received the keys on July 1. When Goodwin attempted to return to work on July 6 he was informed he was discharged due to his mishandling of the keys.

Camden claimed Goodwin was not entitled to unemployment benefits because he had been discharged for misconduct. The Employment Appeal Board concluded Goodwin had not engaged in misconduct because he had accidentally lost the keys. It also found he had not lied to his employer, because at the time of Timm's inquiries,

Goodwin believed he did have the keys in his possession. The decision of the Board was affirmed by the district court on judicial review. Candem now appeals.

Our review is at law and not de novo. *Henecke v. Iowa Division of Job Service*, 533 N.W.2d 573, 575 (Iowa App. 1995). The decision of the agency is final if supported by substantial evidence in the record and correct conclusions of law. *Id.*

Misconduct must be substantial in order to justify a denial of unemployment benefits. *Sellers v. Employment Appeal Board*, 531 N.W.2d 645, 646 (Iowa App. 1995). Misconduct is a deliberate act or omission constituting willful or wanton disregard of an employer's interest and must be intentional. *Savage v. Employment Appeal Board*, 529 N.W.2d 640, 642 (Iowa App. 1995). The burden of proving the employee was guilty of misconduct is on the employer. *Id.*

We find there was substantial evidence in the record to support the Board's conclusion that Goodwin's actions were not intentional misconduct. The evidence showed Goodwin's actions of forgetting to turn in his keys and being unaware of their location might have been considered negligent, but did not rise to the level of misconduct.

We affirm the decision of the district court and the Employment Appeal Board. Costs of this appeal are assessed to the employer.

AFFIRMED.