FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-557 / 91-616

340

SHIRLEY FREELAND,

Petitiioner-Appellant,

vs.

STATE OF IOWA EMPLOYMENT APPEAL BOARD and **HAWKEYE INSTITUTE OF TECHNOLOGY,**

Respondents-Appellees.

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

Plaintiff appeals from an order of the district court affirming the Employment Appeal Board's decision denying plaintiff unemployment benefits due to misconduct. **REVERSED AND REMANDED.**

C.A. Frerichs and Thomas Frerichs of Fulton, Frerichs, Martin & Andres, P.C., Waterloo, for appellant.

Jaki K. Samuelson of Whitfield, Musgrave & Eddy, Des Moines, for appellee Hawkeye Institute of Technology.

William C. Whitten of the Employment Appeal Board, Des Moines, for appellee Iowa Employment Appeal Board.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

Petitioner-appellant Shirley Freeland appeals a district court order affirming the Employment Appeal Board's decision denying her unemployment benefits because she was discharged for misconduct. We find there is not substantial evidence to support the finding of misconduct. We reverse and remand to the agency to award benefits.

Freeland was employed by respondent-appellee Hawkeye Institute of Technology as a secretary. She worked for Glen Pedersen, vice president of vocational technical education. In January of 1990, Freeland was instructed by Pedersen on two occasions to order flowers for her coemployees who were in the hospital. Pedersen told Freeland to collect money from her coemployees to pay for the flowers. Freeland ordered flowers from Design Studio. Freeland charged the flowers to her name. Freeland collected the money necessary from coemployees to pay for the flowers. It is not clear from the record how long it took Freeland to collect these funds. Pedersen checked with Freeland on two occasions to ensure she had enough money for the flower bills and offered to pay any shortage.

The bill for the flowers was first sent to Freeland's attention at Hawkeye Institute of Technology in February 1990. Reminder bills were sent monthly until June of 1990. A Design Studio employee called Freeland about the bill in May or June of 1990.

In June of 1990, the President of Hawkeye Institute of Technology was advised by his secretary there might be a problem with payment of the Design Studio bill. He contacted Design Studio and learned a bill for the flowers Freeland had ordered for coemployees in January had not been paid.

Freeland was called to Pedersen's office and asked if the Design Studio bill had been paid. Freeland told him it had not been paid, but that she would write a check immediately to pay it. Pedersen asked Freeland what happened to the money she collected, and Freeland said she used it to pay for a prescription. Pedersen told Freeland he considered her actions to be theft. She asked if he were going to press criminal charges. Pedersen said that was a possibility as was termination of Freeland's employment. Freeland then offered to resign. Her resignation was accepted.

The next day Freeland tried to withdraw her resignation. She was not allowed to withdraw her resignation. Freeland has paid the bill.

Freeland filed a claim for unemployment benefits. Hawkeye contended Freeland had voluntarily resigned. Freeland was awarded unemployment benefits. Hawkeye appealed. An administrative law judge reversed the decision Freeland had voluntarily resigned and ruled Freeland was guilty of misconduct. She was disqualified from receiving her benefits. Freeland appealed. The

Employment Appeal Board affirmed the administrative law judge's decision. Freeland filed her petition for judicial review, and the district court upheld the decision of the Employment Appeal Board denying benefits. Freeland appeals contending: (1) the Employment Appeal Board denied her due process on the issue of disqualifying conduct when it failed to provide her with adequate notice of such issues prior to the administrative hearing; (2) the district court erred in concluding as a matter of law that substantial evidence existed to warrant the conclusion the flower bills were those of Hawkeye and not the personal obligations of Freeland; (3) an employee's failure to timely pay his or her personal bills does not constitute misconduct that disqualifies that employee from receiving unemployment benefits; and (4) Freeland's conduct in not timely paying her personal flower bill was not a deliberate violation of the disregard of her employer's interests.

Agency factual findings that are supported by substantial evidence contained in the entire record that was before the agency are binding on this court. Roberts v. Iowa Dep't of Job Serv., 356 N.W.2d 218, 221 (Iowa 1984); New Homestead v. Iowa Dep't of Job Serv., 322 N.W.2d 269, 270 (Iowa 1982); Warrell v. Iowa Dep't of Job Serv., 356 N.W.2d 587, 589 (Iowa App. 1984). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. Roberts, 356 N.W.2d at 221; New Homestead, 322 N.W.2d at 270. Resolution of

disputed evidentiary matters and findings of credibility by the administrative law judge shall not be disturbed on appeal. McConnell v. Iowa Dep't of Job Serv., 327 N.W.2d 234, 236 (Iowa 1982); New Homestead, 322 N.W.2d at 271; Warrell, 356 N.W.2d at 589.

We review the district court's application of the law and may correct any misapplication of law by the district court or the agency. Iverson Constr., Inc. v. Department of Employment Servs., 449 N.W.2d 356, 358 (Iowa 1989); Roberts, 356 N.W.2d at 221.

An individual whose employment is terminated due to misconduct is disqualified from receiving unemployment benefits. Iowa Code § 96.5(2) (1989). The Administrative Code provides the following definition of "misconduct" to be applied in evaluating claims for unemployment benefits:

> Misconduct is defined 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.

Iowa Administrative Code r. 370-4.32(1) (____); Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 447-48 (Iowa 1979).

While Freeland was asked by her supervisor to collect for the flowers, it was not a duty as an employee. The flowers were not sent by the employer, but were paid for from personal funds of fellow coemployees. Freeland used her personal credit for the purchase of the flowers. She was responsible for payment of the bill and ultimately paid it. The florist testified about the bill, as follows:

> Q. So you knew it was not a Hawkeye Tech bill? A. I would say it's not a Hawkeye Tech bill.
> Q. Okay. A. Yeah. Only as far as the entire organization goes.
> Q. Yeah. A. Okay.
> Q. And the only person that you billed this to would have been Shirley Freeland? A. That's correct.
> Q. And in your own mind if you would have had to sue over this that's the only person that you know that you could have sued, right? A. I'm probably sure of that, yeah.
> Q. Yeah, I mean, that's the only person that -- A. Yeah.
> Q. -- was civilly responsible for this debt to your business, isn't that correct? A. Uh hum.
> Q. You'll have to say yes or not so the -- A. Oh, yes.

There is not substantial evidence to support a finding of misconduct. We therefore find it unnecessary to address Freeland's other challenges.

We reverse the trial court and the agency and remand to the agency to award benefits.

REVERSED AND REMANDED.