

IN THE COURT OF APPEALS OF IOWA

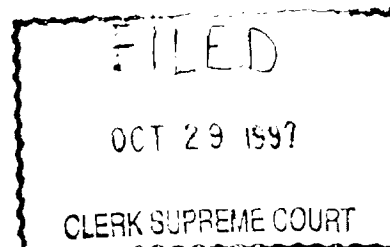
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No. 7-457 / 96-1298

COVENANT MEDICAL CENTER,
Appellee,

vs.

EMPLOYMENT APPEAL BOARD and STEPHEN J. THIESEN,
Appellants.



Appeal from the Iowa District Court for Black Hawk County, Jon Fister,
Judge.

The respondents appeal the district court's ruling on judicial review reversing
the Employment Appeal Board's decision to award an employee unemployment
benefits. **REVERSED.**

Mark F. Conway of Swisher & Cohrt, P.L.C., Waterloo, for employee-
appellant.

William Whitten, Des Moines, for appellant board.

John R. Walker, Jr., of Beecher, Rathert, Roberts, Field, Walker & Morris,
P.C., Waterloo, for appellee.

Considered by Cady, C.J., Huitink, J., and Perkins, S.J.*

*Senior judge from the Fifth Judicial District serving on this court by order of the
Iowa Supreme Court.

PERKINS, S.J.

The respondent, Stephen Thiesen, was employed as a safety and security manager by the petitioner, Covenant Medical Center, until July 17, 1995, when he was discharged. The discharge was based on an incident in which Thiesen's coemployee, Bobbi Hartwig, received an obscene and sexually harassing voice mail message she recognized to be from Thiesen. Three other people also identified Thiesen as the caller. Thiesen denies making the call. Covenant was unable to confirm the caller's identity by voice analysis.

Thiesen's claim for unemployment benefits was challenged by Covenant on the basis he engaged in disqualifying misconduct. An administrative law judge (ALJ) entered a decision determining Covenant had not established Thiesen engaged in disqualifying misconduct. The ALJ concluded Thiesen was eligible for benefits. The ALJ apparently based the decision in part on Covenant's failure to introduce the tape of the message as evidence. On Covenant's appeal, the Employment Appeal Board affirmed the decision determining Thiesen was eligible for benefits.

Covenant filed a timely petition for judicial review challenging the board's decision. After a hearing, the district court entered a ruling determining the board's decision was not supported by substantial evidence. The court concluded Thiesen's denial was outweighed by the testimony of four people identifying Thiesen as the person making the obscene call. The court further concluded the decision determining Thiesen was eligible for unemployment benefits was arbitrary and

capricious. The court concluded the decision essentially imposed an erroneous higher burden of proof on Covenant than the required standard of preponderance of the evidence and, therefore, was affected by an error of law.

On July 17, 1996, Thiesen filed a notice of appeal. The Employment Appeal Board joined in the appeal, but this joinder was never filed in district court.

I. Scope of Review.

The district court, when exercising the power of judicial review over agency action, is functioning in an appellate capacity to correct errors at law. Iowa Code § 17A.19(8) (1995). Our review of the district court's decision is limited to correction of errors at law. *Roberts v. Iowa Dep't. of Job Service*, 356 N.W.2d 218, 221 (Iowa 1984). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence. Iowa Code § 17A.19(8)(f) (1995). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion.

II. Issue—Was the Decision of the Board Supported by Substantial Evidence?

The employer, Covenant Medical Center had the burden of proving misconduct by the employee, Steven J. Thiesen. The proof must be by a preponderance of the evidence. In this case the evidence is in direct conflict. The employer presented witnesses who had listened to a tape recording of a telephone call and testified the voice on the tape was that of Thiesen. The only witness who

contradicted this testimony was Thiesen, who testified he did not make the call and the voice was not his voice.

The administrative law judge decided the employer had not met its burden of proof and the Employment Appeal Board, on the basis of this record, affirmed. The district court concluded the testimony of Thiesen denying the accusation was “not substantial” evidence.

The question is not whether the evidence might support a different finding but whether the evidence supports the finding actually made. *Henry v. Iowa Dep’t. of Job Serv.*, 391 N.W.2d 731, 734 (Iowa App. 1986).

By accepting the testimony of Thiesen, and by concluding the testimony of the employer’s witness as being mistaken, the board made a decision that was supported by substantial evidence. We agree.

Thus, having found the decision of the board was based upon substantial evidence, we also find such decision was neither arbitrary nor capricious. We reverse the decision of the district court. The decision of the Employment Appeal Board is reinstated.

REVERSED.