IN THE COURT OF APPEALS OF IOWA

No. 3-144 / 92-1224

FILED
MAY 04 1993
CLERK SUPREME COURT

TRACE H. TICKAL,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD and
ALEXANDER MANUFACTURING COMPANY, INC.,

Appellees.

000627

Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

The petitioner appeals from the district court's decision on judicial review affirming the Employment Appeal Board's decision determining that the petitioner was disqualified from receiving unemployment benefits by engaging in misconduct consisting of the failure to clock out while he was at lunch. **REVERSED AND REMANDED.**

Evelyn Ocheltree of Legal Services Corporation of Iowa, Mason City, for appellant.

William C. Whitten of Employment Appeal Board, for appellee.

Charles W. McManigal of Laird, Heiny, McManigal, Winga, Duffy & Stambaugh, Mason City, for appellee employer.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

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OXBERGER, C.J.

From August 18, 1986 until his discharge on April 8, 1991, the petitioner, Trace Tickal, was employed by Alexander Manufacturing Company as an electronics packager. Apparently in 1987, Tickal had failed to clock out for lunch. On April 5, 1991, Tickal went to lunch without punching out on the time clock. On his return, he failed to punch in. At the end of the day, he certified his time card for the week as being correct. Subsequently, the employer discharged him for misconduct considering it time card theft.

Tickal subsequently applied for unemployment benefits. During the administrative proceedings, he testified he merely forgot to clock out when he went to lunch. The agency determined that failure to clock out was a deliberate attempt to receive compensation for the time he was out for lunch. The Employment Appeal Board entered a final decision determining Tickal engaged in misconduct disqualifying him from receiving unemployment benefits. A third member of the board dissented, asserting that the failure to punch out was "no more than an isolated incident of negligence." The district court affirmed the Appeal Board's decision.

On July 23, 1992, the petitioner filed a notice of appeal.

Discussion

Tickal contends he did not possess the requisite intent necessary to sustain a finding of misconduct.

Disqualifying misconduct requires volition, wrongful intent, a deliberate act or omission, or culpable behavior. Newman v. Iowa Dep't of Job Service, 351 N.W.2d 806, 808 (Iowa App. 1984). We have consistently held that acts of carelessness or negligence must be sufficiently recurrent and not merely isolated in order to rise to the level of culpable or intentional misconduct. Flesher v. Iowa Dep't of Job Serv., 372 N.W.2d 230, 234 (Iowa 1985); Greene v. Employment Appeal Bd., 426 N.W.2d 659, 661 (Iowa App. 1988). In addition, the employer has the burden of proving the employee's conduct was intentional. Cosper v. Iowa Dep't of Job Serv., 321 N.W.2d 6, 11 (Iowa 1982).

In essence, the agency found that Tickal's failure to clock out, failure to clock in upon return and certification of his time card as accurate were three separate acts, which, viewed as a whole, indicated he intended to commit the offense.

We disagree. We cannot conclude that the commission of an act, viewed in its component parts, is sufficient evidence of intent to commit that act. More evidence of intent is required. Accordingly, we reverse the decision of the district court and remand this case for a determination of benefits in accordance with this opinion.

REVERSED AND REMANDED.