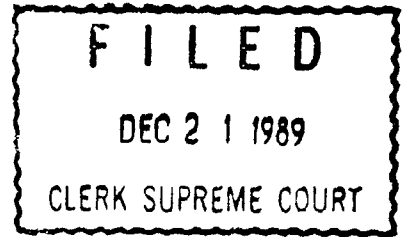


IN THE COURT OF APPEALS OF IOWA

No. 9-559 / 89-609



KENNETH M. PFEILER,

Petitioner-Appellant,

vs.

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EMPLOYMENT APPEAL BOARD,

Respondent-Appellee.

Appeal from the Iowa District Court for Polk County,
Ray A. Fenton, Judge.

Petitioner appeals a district court decision affirming
the appeal board's denial of unemployment benefits.

AFFIRMED.

Richard R. Gleason of Legal Services Corporation of
Iowa, Dubuque, for petitioner-appellant.

William C. Whitten, Des Moines, for
respondent-appellee.

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

SACKETT, J.

Petitioner Kenneth M. Pfeiler appeals a district court decision affirming a denial of unemployment benefits by the Employment Appeal Board. Petitioner claims the appeal board's decision was not supported by substantial evidence and was affected by errors of law. Petitioner contends the record does not establish misconduct on his part that would disqualify him from unemployment benefits.

Our scope of review is limited to the correction of errors at law. Ray v. Iowa Dep't of Job Serv., 398 N.W.2d 191, 193 (Iowa App. 1986). We are bound by an agency's findings of fact if they are supported by substantial evidence. See New Homestead v. Iowa Dep't of Job Serv., 322 N.W.2d 269, 270 (Iowa 1982). We affirm the district court decision.

Petitioner was employed as a cleanup worker for Chemidyne Corporation, Packers Sanitation Services Division. Packers Sanitation had a contract to clean a meatpacking company in Dubuque. As part of his job petitioner used a waterhose, chemicals, foamer, and soap. On March 4, 1988, petitioner became involved in a water fight with two other employees. He had previously received two verbal warnings concerning horseplay. Petitioner was discharged on March 4 for engaging in horseplay while at work.

Petitioner's original claim for unemployment benefits was granted. The employer then sought an administrative hearing. The hearing officer reversed the prior decision, finding the horseplay showed a willful and wanton disregard for the employer's interests and constituted misconduct. The Employment Appeal Board affirmed the hearing officer. On judicial review, the district court affirmed the appeal board.

Petitioner admits he engaged in a water fight with other employees, but contends his actions were not a serious violation of any company rule. If his actions were serious enough to be considered misconduct, he argues, they were serious enough to warrant a written warning. Other employees admitted to being in water fights, and petitioner claims his supervisor had been involved in water fights as well.

Petitioner contends the record does not contain substantial evidence of misconduct on his part that justifies a denial of unemployment benefits, and that the board and the court erred, as a matter of law, in finding that his actions constituted misconduct. We disagree.

We must affirm the agency decision if it is supported by substantial evidence. Iowa Code § 17A.19(8)(f) (1989). Evidence is substantial if the agency could reasonably have found it adequate to reach its conclusion. See Mercy Health Center v. State Health Facilities Council, 360 N.W.2d 808, 811-12 (Iowa 1985).

Misconduct must be substantial in order to justify a denial of unemployment benefits. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The acts of the employee must show a willful and wanton disregard of the employer's interest, as in a violation of a standard of behavior that the employer has the right to expect of employees. Id. at 735.

We find the agency could reasonably have found petitioner's actions showed a willful and wanton disregard for the employer's interests. There is sufficient evidence to support a finding plaintiff was guilty of misconduct sufficient to deny his request for unemployment benefits. The agency action here is supported by substantial evidence.

We affirm the district court decision.

AFFIRMED.

Donielson, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

I respectfully dissent. I would find the "horseplay" was not a willful and wanton disregard of employer's interest.