

IN THE COURT OF APPEALS OF IOWA

No. 3-765 / 12-2209
Filed September 5, 2013

TINA E. DIAZ,
Petitioner-Appellant,

vs.

IOWA EMPLOYMENT APPEAL BOARD,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hansen,
Judge.

Tina Diaz appeals from the district court's ruling on judicial review,
affirming the denial of unemployment benefits. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Rick Autry, Employment Appeal Board, Des Moines, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Tina Diaz appeals from the district court's ruling on judicial review, affirming the denial of unemployment benefits. The employment appeal board's conclusion that Diaz was discharged for misconduct was not irrational, illogical, or a wholly unjustifiable application of law to fact. We therefore affirm.

I. Background Facts and Proceedings.

The following facts are not in dispute. Tina Diaz began working for CPMI in 1991. Diaz had access to company data provided by the United States General Services Administration and the Federal Bureau of Investigation. The federal contracts under which the employer, CPMI, operated provided that no individual charged or convicted of a felony or any drug or alcohol-related offense could have access to the information.

On August 23, 2011, CPMI sent a letter to Diaz terminating her employment. The letter explained:

On August 22, 2011, CPMI became aware that on July 29, 2011, you entered a plea of guilty to two counts of Delivery of a Controlled Substance-methamphetamine, in violation of Iowa Code section 124.40I(1)(c)(6), a Class C Felony. As you know, CPMI works under numerous state and federal contracts that have specific rules on employing individuals with a criminal record. We believe your continued employment will put CPMI in a serious disadvantage in competing for future work and managing our security clearance requirements for that work. Accordingly, we feel your employment must be terminated.

Diaz was denied unemployment benefits "for conduct not in the best interest of [her] employer."

Diaz appealed that decision and, following a hearing before an administrative law judge (ALJ), the denial of unemployment benefits was upheld.

The ALJ ruled that Diaz was discharged for misconduct, finding:

The employer has established that the claimant's behavior placed it at risk for losing its contracts with the United States government. The claimant acknowledged not disclosing the fact of the criminal charge to the employer. While she attributed this primarily to embarrassment she listed a secondary concern as fear for her job. The evidence establishes that the claimant acknowledged her actions were inappropriate by pleading guilty to the charges. The evidence establishes a nexus between the claimant's willful actions and her employment.

Diaz appealed to the Employment Appeal Board, asserting the ALJ erred in finding she was discharged for misconduct, made an unsubstantiated finding that the employer risked losing contracts with the United States government, and failed to take into account the legal effect of a deferred judgment. By a divided vote of one-one, the ALJ's decision was affirmed by operation of law. Her application for rehearing was denied.

Diaz filed a petition for judicial review, asserting the agency erred in concluding she was discharged for misconduct and had misapplied the law as it relates to the legal effect of the entry of a deferred judgment. The district court concluded substantial evidence supported the agency's finding that Diaz was terminated for misconduct. The court ruled that the legal effect of Diaz's deferred judgment was irrelevant, "because according to [the employer's] testimony the mere fact that she had been charged could have harmed the company's chances when applying for future contracts." The court observed that the fact-finder had

“clearly found [the employer’s] testimony credible,” and the agency’s decision was not unreasonable.

Diaz appeals.

II. Scope and Standard of Review.

Iowa Code chapter 17A (2013), the Administrative Procedure Act, governs our review of claims concerning unemployment benefits. *Harrison v. Emp’t Appeal Bd.*, 659 N.W.2d 581, 586 (Iowa 2003). We review to correct any errors of law that may have occurred at the agency level. *Id.* Section 17A.19(8) provides that a party may successfully challenge an agency decision when the party’s substantial rights have been prejudiced because the agency action “is unsupported by substantial evidence” or “is affected by other error of law.”

III. Discussion.

An employee who is terminated for misconduct is disqualified from receiving unemployment benefits. Iowa Code § 96.5(2)(a); Iowa Admin. Code r. 871-24.32(1)(b). Misconduct for this purpose 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 Admin. Code r. 871-24.32(1)(a). This definition has been held to “accurately reflect[] the intent of the legislature.” *Reigelsberger v. Emp’t Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp’t App. Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer bears the burden of proving a claimant is disqualified for benefits because of misconduct. See Iowa Code § 96.6(2) (“The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5.”); *Lee*, 616 N.W.2d at 665.

Diaz asserts she is entitled to relief because the agency’s decision is an incorrect application of law to undisputed facts. In other words, she contends the agency’s decision is “[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.” Iowa Code § 17A.19(10)(m). We will therefore analyze whether the district court correctly applied the law by applying section 17A.19(10)(m) to the agency action to determine whether our conclusions are the same as the district court’s. *Weishaar v. Snap-On Tools Corp.*, 506 N.W.2d 786, 789 (Iowa 1993); *Langley v. Emp’t Appeal Bd.*, 490 N.W.2d 300, 302 (Iowa Ct. App. 1992).

Diaz contends the agency erred in finding her situation was like that in *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698, 702 (Iowa 1980). In *Cook*, the supreme court agreed with the district court that a trucker was discharged for misconduct, rather than having voluntarily quit, when his employment was terminated due to his having received numerous speeding

tickets and his consequent “self-inflicted uninsurability.” 299 N.W.2d at 702.

The court noted that Cook’s uninsurability rendered him unemployable. *Id.* at 702. The court wrote,

In his testimony Cook himself brought out the reason Hawkeye had to let him go: he was a truck driver, but his repeated traffic violations rendered him uninsurable and thus unemployable. While he received most of his driving citations during non-work hours and in his personal car, they all bore directly on his ability to work for Hawkeye. Cook knew this, and even expressed fear to Hawkeye about losing his license. He does not claim that anyone forced him to violate the laws of the road, yet he persisted in doing so. The district court correctly construed the law in classifying this case as a separation for misconduct.

While this record does not contain a document signed by Diaz acknowledging that she would not engage in illegal behavior, the employer testified CPMI’s employee handbook, which is provided to all employees, includes that obligation. The employer also testified Diaz did sign a document acknowledging the rules related to governmental contracts. Diaz underwent a background check prior to her employment. According to her employer’s testimony, Diaz being charged with a drug offense rendered her unemployable. Her awareness of that fact is evidenced by her testimony acknowledging that she did not inform her employer of the drug charges because she feared for her employment. The agency’s application of law to fact here is not irrational, illogical, or wholly unjustifiable.

The agency found Diaz was discharged for misconduct, concluding the employer had met its burden to show that Diaz’s behavior placed it at risk for losing its governmental contracts. See Iowa Admin. Code r. 871-24.32(1)(a) (defining misconduct as “carelessness or negligence of such degree of

recurrence as to manifest . . . substantial disregard of the employer's interests"); *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992) ("An act constitutes misconduct if it shows a wanton or willful disregard of the employer's interests, a disregard of standards of behavior that the employer has a right to expect, or constitutes a 'deliberate violation of the employer's rules.'" (citation omitted)). In determining the employer had met its burden, the agency impliedly found the employer's testimony that it risked losing contracts with the United States government to be credible. Credibility findings are within the agency's exclusive domain. See *Christiansen v. Iowa Bd. of Educ. Exam'rs*, 831 N.W.2d 179, 192 (Iowa 2013) ("It is the agency's duty 'as the trier of fact to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue.'" (citation omitted)).

Diaz attempts to distinguish her circumstances from those in *Kleidosty* where the court upheld a conclusion that the employee's sale of cocaine on her own premises and on her own time constituted a deliberate violation of the employer's rules against illegal conduct. See 482 N.W.2d at 417. Diaz argues that, here, there are no such clear rules against illegal conduct. There was no demonstrative evidence presented that she signed any employment contract or other document against illegal conduct. However, as we have already observed, the CPMI's employee handbook provided otherwise and the employer contended she had signed documents, and the agency credited the employer's testimony.

The *Kleidosty* court cited several cases from other jurisdictions that denied unemployment compensation benefits for drug offenses as against the

employer's interests. See *id.* at 418-19; see also *Kehde v. Iowa Dep't of Job Serv.*, 318 N.W.2d 202, 207 (Iowa 1982) (finding substantial evidence supported the conclusion that employee deliberately violated rightful expectations of employer by smoking marijuana on work premises even though employee purportedly was unaware of rule prohibiting working while under the influence, and stating an employee "cannot contend that he did not know his possession was a violation of the criminal law, because everyone is presumed to know the law"). Here, the CPMI employee handbook prohibits illegal conduct. Diaz, a twenty-year employee who was working on an FBI project with access to FBI information, and who had previously undergone a FBI background check, did not inform her employer of her drug charges in part because of embarrassment, but also in fear of losing her job.

The employer was in jeopardy of losing contracts by an employee who was simply charged with drug offenses. The employer has a right to expect that an employee will not jeopardize the company's substantial contracts. There is substantial evidence in the record to support the conclusion that Diaz deliberately violated this rightful expectation. We affirm the determination that Diaz was discharged from misconduct.

AFFIRMED.