

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001256-MR

JANSON HALL

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 06-CI-00386

KENTUCKY UNEMPLOYMENT INSURANCE
COMMISSION AND SENSUS PRECISION DIE
CASTING, INC.

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; THOMPSON, JUDGE; BUCKINGHAM,¹
SENIOR JUDGE.

THOMPSON, JUDGE: Janson Hall appeals from the Logan Circuit Court's order upholding the Kentucky Unemployment Insurance Commission's decision to deny unemployment insurance benefits due to his discharge for misconduct. Concluding that the Commission's decision was supported by substantial evidence, we affirm.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

On June 23, 2003, Hall began his employment with Sensus Precision Die Casting, Inc., and signed a form wherein he agreed to his employer's work rules. One of these rules stated that sleeping on the job was sufficient grounds for immediate dismissal. This rule was also posted at Hall's workplace.

On March 28, 2006, while training as a quality technician, Hall was discovered sleeping by a co-worker. After Sensus conducted an investigation, it concluded that Hall was asleep in a chair in the lab, with his arm folded under his head as a pillow, and was stretched out. Although the co-worker made multiple attempts to rouse him, including calling his name and nudging his foot, Hall had to be shaken before he was awakened.

After his discharge for violating a work rule, Hall filed for unemployment insurance benefits but was denied. After this decision was upheld by a referee and then by the Commission, Hall appealed to the circuit court. He argued that he fell asleep because he had not adjusted to his transfer from second shift to first. Hall further argued that his conduct was not willful because sleeping was an unconscious state. The trial court upheld the Commission's decision and this appeal followed.

Hall argues that the trial court erred by finding that his actions constituted misconduct as used in KRS 341.370(6) because sleeping could not have been a willful or wanton act sufficient to support his disqualification for

unemployment benefits. Further, he argues that his falling asleep was not willful but was the result of the change in his work schedule. We disagree.

Judicial review of the decisions of an administrative agency is centered on the question of arbitrariness due to our constitution's prohibition against arbitrary administrative actions. *Com. Transp. Cabinet Dept. of Vehicle Regulation v. Cornell*, 796 S.W.2d 591, 594 (Ky. App. 1990). Our analysis begins with determining whether an agency's decision is based on substantial evidence. *Kentucky Retirement Systems v. Heavrin*, 172 S.W.3d 808, 814 (Ky. App. 2005).

“Substantial evidence is defined as ‘evidence of substance and relative consequence having the fitness to induce conviction in the minds of reasonable [persons].’” *Kentucky Unemployment Insurance Commission v. Landmark Community Newspapers of Kentucky, Inc.*, 91 S.W.3d 575, 579 (Ky. 2002). If the Commission's findings were supported by substantial evidence, our review is limited to determining whether it applied the correct rule of law. *Burch v. Taylor Drug Store, Inc.*, 965 S.W.2d 830, 834 (Ky. App. 1998).

We conclude that the Commission's findings of facts were supported by substantial evidence. The Commission found that Hall's stretching out with his arm folded under his head to make a pillow was an act conducive to falling asleep. While considering the change of work schedule argument, the Commission reasoned that Hall was aware of his scheduling change and could have taken precaution to avoid falling asleep on the job. Although Hall disagrees with this conclusion, “a reviewing appellate court cannot substitute its judgment for that of

the fact-finder regarding evaluations of evidence or questions of fact.” *Kentucky Retirement Systems v. Bowens*, 281 S.W.3d 776, 784 (Ky. 2009).

KRS 341.370(1)(b) provides that “[a] worker shall be disqualified from receiving benefits for the duration of any period of unemployment with respect to which [h]e has been discharged for misconduct” Although an employee may be discharged for cause, the unemployment insurance act provides mitigating circumstances permitting the receipt of statutory benefits by the employee. *Kentucky Unemployment Ins. Com'n v. Duro Bag Mfg. Co.*, 250 S.W.3d 351, 354 (Ky. App. 2008). These mitigating circumstances obviate the undesirable outcome of denying unemployment benefits to employees who were forced to leave their employment by forces beyond their control. *Kentucky Unemploy. Ins. Com'n v. Kroehler Mfg. Co.*, 352 S.W.2d 212, 214 (Ky. 1961).

“Reviewing the law relating to discharge for misconduct, we observe that an employer is entitled to the faithful and obedient service of his employee, and that failure to render same may constitute misconduct by the employee.” *Shamrock Coal Co., Inc. v. Taylor*, 697 S.W.2d 952, 954 (Ky. App. 1985). Our courts have held that “‘misconduct,’” under the Act, “is limited to willful, wanton, and deliberate violations of rightful standards of behavior or recurring negligence or carelessness manifesting a wrongful intent or evil design; and (2) that an isolated instance of unsatisfactory conduct does not constitute ‘misconduct’ under the Act.” *Duro Bag Mfg. Co.*, 250 S.W.3d at 354.

We conclude that the trial court properly upheld the Commission's decision. While Hall contends that his sleeping was involuntary and not misconduct, the Commission properly found that Hall's sleeping on the job constituted a willful violation of a known work rule which evinced a substantial disregard of its interest and the expected standards of an employee's behavior. Hall's decision to put himself in a position conducive to falling sleep and then to sleep on the job was not an action to accomplish his employer's purpose. *Shamrock Coal Co., Inc.*, 697 S.W.2d at 954. Accordingly, in light of the reasonable employment relationship, we conclude that the denial of Hall's claim for unemployment benefits was not arbitrary.

Hall next argues that Sensus's workplace rule permitting an employee's immediate dismissal for sleeping on the job was unreasonable. He argues that this rule could not have been a justifiable basis for the denial of his claim for unemployment benefits. We disagree.

In *Douthitt v. Kentucky Unemployment Ins. Com'n*, 676 S.W.2d 472, 475 (Ky. App. 1984), we held that an employee could be denied unemployment benefits if he violated a "reasonable and uniformly enforced" work rule. These rules permit employers to maintain a standard of employee behavior which employers have a right to require. *Brown Hotel Company v. White*, 365 S.W.2d 306, 307 (Ky. 1963). Therefore, we are unpersuaded by Hall's argument and conclude that employers have a right to expect their employees to be awake and alert while at work.

For the foregoing reasons, the Logan Circuit Court's order upholding the decision of the Commission is affirmed.

ALL CONCUR.

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