NUMBER 13-15-00255-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

TEXAS WORKFORCE COMMISSION, Appellant,

v.

MARIA PATRICIA MACIAS, Appellee.

On appeal from the 357th District Court of Cameron County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Chief Justice Valdez

Appellant Texas Workforce Commission (TWC) appeals the trial court's judgment, which reversed the TWC's determination that appellee Patricia Macias was disqualified from receiving unemployment benefits. *See* TEX. LABOR CODE ANN. § 207.044(a) (West, Westlaw through 2015 R.S.). We affirm.

I. BACKGROUND

For over two decades, the Harlingen Independent School District employed Macias as a paraprofessional. Macias's job duties primarily consisted of helping teachers

manage students in the classroom. A school policy prohibited paraprofessionals from having "conferences" with parents about students; instead, parent conferences were reserved for teachers.

On October 18, 2012, a teacher at the school where Macias worked told the principal that she overheard Macias talking to a student's grandfather about the student. The principal determined that Macias violated the school's policy against conferencing and fired her.

Approximately four months after her termination, Macias filed a claim with the TWC seeking unemployment compensation starting from the date of her termination. The TWC determined that Macias was disqualified from receiving unemployment compensation because she committed "misconduct" as defined by the Texas Unemployment Compensation Act, by "mismanag[ing] her position of employment." *See id*. (providing that "an individual is disqualified for benefits if the individual was discharged for misconduct connected with the individual's last work"); *see also id*. § 201.012 (West, Westlaw through 2015 R.S.) (defining misconduct as, among other things, "mismanagement of a position of employment"). Specifically, the TWC concluded that Macias mismanaged her position as a paraprofessional by having a conference with the student's grandfather on October 18, 2012.

Thereafter, Macias timely appealed the TWC's finding of misconduct to the trial court. After an evidentiary hearing on the issue, the trial court entered a judgment reversing the TWC's decision to deny Macias unemployment benefits. This appeal by the TWC followed.

II. DISCUSSION

By its first issue, the TWC contends that the trial court erred in reversing the TWC's finding of misconduct.

A. Standard of Review

Under the applicable standard of review, the trial court's judgment stands if the TWC's finding of misconduct was not supported by "substantial evidence." *See id*. § 212.202(a) (West, Westlaw through 2015 R.S.); *see also State v. Pub. Util. Comm'n of Tex.*, 883 S.W.2d 190, 204 (Tex. 1994); *Tex. Employment Comm'n v. Holberg*, 440 S.W.2d 38, 42 (Tex. 1969). Substantial evidence means more than a scintilla. *See Pub. Util. Comm'n of Tex.*, 883 S.W.2d at 204.

B. Applicable Law

An employee is disqualified from receiving unemployment benefits if she is discharged for misconduct. *See* TEX. LABOR CODE ANN. § 207.044(a). As relevant here, misconduct is defined as "mismanagement of a position of employment by action or inaction." *Id*. § 201.012. An employee's "mere inability to perform" a job duty is not sufficient to support a finding that the employee mismanaged a position of employment. *Mercer v. Ross*, 701 S.W.2d 830, 831 (Tex. 1986). Instead, mismanagement requires "intent, or such a degree of carelessness [by the employee] as to evidence a disregard of the consequences, whether manifested through action or inaction." *Id*.

C. Analysis

In view of the foregoing authority, the issue is whether substantial evidence in the trial record exists to support the TWC's finding that Macias mismanaged her position as a paraprofessional when she spoke to a student's grandfather on October 18, 2012.

The incident which led to Macias's termination occurred at school when the student's grandfather asked Macias "How did my grandson do?" and Macias answered: "He [was] just jumping up and down. Just a boy. But if you want further information, you can find the teacher."

Although Macias directed the grandfather to the teacher for further information, the TWC argues that Macias held a prohibited conference when she described the grandson as a boy who jumps, because that description revealed information about a student's behavior. The TWC cannot point to any written school policy wherein the word "conference" is specifically defined to include Macias's answer to the grandfather's question. Instead, the TWC points to write-ups that Macias received from the school principal as evidence that she knew she was conferring with the student's grandfather. Immediately below, we discuss these write-ups in an attempt to understand the contours of the school's conferencing policy.

The first write-up occurred over three years before Macias was fired. Macias was written up for "discussing" an incident with a parent concerning her child. The write-up states that, after the incident, the principal held a "personnel conference" with Macias, during which the principal "role modeled" how to "politely avoid a discussion with any parent that should be redirected to the teacher." However, the write-up does not identify what aspect of Macias's discussion constituted a conference other than to generally note that discussions with parents about "student information" are conferences. The write-up then states that, shortly after the personnel conference, Macias held another conference with a parent when she conversed about the personnel conference with the parent, but there is no indication that Macias exchanged "student information" during her conversation with the parent about the personnel conference.

Four days after the personnel conference, Macias was written up again for having a "discussion" about a student with the student's parent, but the write-up provides no details regarding what aspect of the discussion constituted a conference.

Finally, three years later, Macias was written up for allegedly conferring with a parent in the school cafeteria. The principal's write-up, which was addressed to Macias, contains the following narrative regarding the incident:

> I called you into the office and asked you to explain what happened . . . in the cafeteria. You stated that a parent entered the cafeteria and asked you to help her identify some students that she believed had teased her child on the bus earlier that week. You told her to go to the office. Instead of proceeding to the office, you watched as [the parent] stood against the kitchen wall to look for the students. Then, you called out to and walked over to the paraprofessional who was monitoring our first through second grade students. You asked the paraprofessional to help you find the students who might be involved. The paraprofessional told you she could not help you so you returned to your duty.

The write-up generally reiterates that conferences are not allowed but then fails to identify what aspect of Macias conduct constituted a conference. Specifically, the write-up does not explain whether Macias was guilty of conferencing because she: (1) "told [the parent] to go to the office," (2) "watched as [the parent] stood against the kitchen wall to look for the students," or (3) asked another paraprofessional to help find the students who might be involved. Although none of these actions appear to involve a "discussion" with a "parent" about "student information," Macias was written up for conferring with the parent in the school cafeteria.

The TWC relies on the sum-total of these write-ups as evidence that Macias clearly understood what a conference was, clearly understood how a conference could be "politely avoided" and redirected to the teacher, and clearly understood why she was guilty of conferencing when she answered the grandfather's question on October 18, 2012. We cannot agree. Based on the evidence contained in the record before us, the

write-ups do not articulate a conferencing policy with any degree of definiteness that would have allowed Macias to understand what conduct was prohibited under the policy. For example, the write-ups left Macias guessing as to the reason why she had not "politely avoided" a conference with the student's grandfather when she responded to his question by stating that the boy jumps, "[b]ut if you want further information, you can find the teacher."

In any event, contrary to the TWC's contention on appeal, we need not decide whether substantial evidence exists to support a finding that Macias *actually* violated the school's conferencing policy on October 18, 2012. Rather, the issue is whether substantial evidence supports the TWC's finding that Macias committed misconduct by mismanaging her position of employment as a paraprofessional. *See* TEX. LABOR CODE ANN. § 201.012 (defining misconduct as mismanagement of a position); *see also Mercer*, 701 S.W.2d at 831 (holding that mismanagement requires "intent, or such a degree of carelessness as to evidence a disregard of the consequences"). Because the write-ups failed to reasonably notify Macias regarding what conduct was prohibited under the school's conferencing policy, the record does not support a finding that she intended to violate or carelessly disregarded the policy when she responded to the grandfather's question by stating that the boy jumps, "[b]ut if you want further information, you can find the teacher." *See* TEX. LABOR CODE ANN. § 201.012; *see also Mercer*, 701 S.W.2d at 831.

We agree with the trial court that substantial evidence did not support the TWC's finding of misconduct in this case. *See* TEX. LABOR CODE ANN. § 212.202(a). We therefore overrule the TWC's first issue.

III. CONCLUSION

We affirm the trial court's judgment.[1]

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed the
25th day of May, 2017.

[1] The TWC's second and third issues challenge the trial court's judgment to the extent that the judgment awards Macias unemployment benefits for the four-month period before which she filed her claim for benefits. Macias requested benefits for that period of time at the administrative level, but she did not re-urge that request in the trial court or otherwise challenge that portion of the TWC's decision. Having reviewed Macias's pleading, as well as the evidence and argument presented to the trial court, we conclude that the only issue submitted to the trial court was whether the TWC erred in determining that Macias was fired for misconduct. Because we do not read the trial court's judgment as affecting the portion of the TWC's decision to deny benefits for the four-month period of time before which Macias filed her claim for benefits, we need not address the TWC's second and third issues as they are not dispositive for purposes of this appeal. *See* TEX. R. APP. P. 47.1; *see also Davis v. Hemphill*, 243 S.W. 691, 693 (Tex. Civ. App.—Fort Worth 1922, no writ) (observing that a judgment is a final consideration and determination on the matters submitted to it).