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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JANICE M. BEDNORZ,) No. 1 CA-UB 10-0035
)
Appellant,) DEPARTMENT C
)
v.)
) **MEMORANDUM DECISION**
) (Not for Publication -
ARIZONA DEPARTMENT OF ECONOMIC) Rule 28, Arizona Rules
SECURITY, an Agency,) of Civil Appellate
) Procedure)
and)
)
FACILITY SOURCE, INC.,)
)
Appellees.)
_____)



DIVISION ONE
FILED: 02/22/11
RUTH WILLINGHAM,
ACTING CLERK
BY: DLL

Appeal from the A.D.E.S Appeals Board

Cause No. U-1121133-BR

REVERSED AND REMANDED

Cameron Hall & Associates LLC
By Cameron Hall
Attorneys for Appellant

Phoenix

Thomas Horne, Arizona Attorney General
By Amanda Holguin, Assistant Attorney General
Attorneys for Appellee, A.D.E.S.

Mesa

D O W N I E, Judge

¶1 Janice Bednorz appeals from the denial of her claim for unemployment insurance benefits. The Arizona Department of Economic Security ("ADES") Unemployment Insurance Appeals Board

("Board") determined that Bednorz was disqualified from benefits because she was discharged for work-related misconduct. For the following reasons, we reverse and remand for an award of benefits.

FACTS AND PROCEDURAL HISTORY

¶2 In April 2007, Bednorz became employed by Facility Source, a real estate property management company, as a customer service representative. On January 5, 2009, she transferred to a new position with Facility Source as an accounts payable clerk. In February 2009, the employee who was the "accounts payable lead" ("AP lead") resigned; Bednorz began training for that position.

¶3 Linda Millia, a senior project manager, testified that she sent emails to Bednorz detailing errors she was making in her new role as AP lead. Only one of those emails--dated March 25, 2009--is in the record. It reads:

I just want to ensure you understand what was discussed during our call today on 3/25/09: The following have been noted from your handling of the AP Lead position:

1. Incorrect vendors chosen for payment
2. Incorrect amounts entered
3. Incorrect coding
4. No approvals for invoices over \$5K
5. Sylvania invoices over \$1K to be reviewed by LM before going to RDO approval
6. Not copying AP email for outgoing emails to CQ
7. Not keeping up with invoice entries
8. Daily tasks not consistent

9. Not escalating issues to AP Manager
10. Back log of invoices dated beyond 2 weeks old should be brought to the AP Manager's attention immediately[.]

You will have 30 days to improve on the above. We will re-visit after the 4/20/09 upload.

You requested that Bridgett assist you with catching up on researching vendor docs for all invoices received. I will issue out an email requesting that this be part of her duties.

Please also note that you had requested 2 days vacation for 3/26 and 3/27 which may cause you to be back logged again. I would expect that you have a plan to ensure that you can catch up when you return. I will work with Bridgett to ensure that we can assist as much as possible so that you will not fall behind.

If there any [sic] other questions or concerns, please let me know. Your confirmation receipt of this email is appreciated.

Bednorz responded to the March 25 email, stating: "I understand the issues, and assure you there will be improvement." With her supervisor's help, Bednorz instituted changes until she "really felt that [she] was doing [her] job and, and [sic] keeping things caught up the way [she] should."

¶4 Facility Source discharged Bednorz on April 27, 2009. Bednorz applied for unemployment benefits, which were denied by a department deputy. Bednorz appealed, but the Appeals Tribunal affirmed the denial, finding Bednorz was discharged for

work-related misconduct. The Board affirmed in a two-to-one decision. Bednorz brought a timely application for appeal, which this court granted.

DISCUSSION

¶15 We are bound by the Board's reasonable findings of fact, but we review *de novo* its application of the law. *Rice v. Ariz. Dep't of Econ. Sec.*, 183 Ariz. 199, 201, 901 P.2d 1242, 1244 (App. 1995). We will affirm the Board's decision if any reasonable interpretation of the record supports it. *Bowman v. Ariz. Dep't of Econ. Sec.*, 182 Ariz. 543, 545, 898 P.2d 492, 494 (App. 1995). However, courts interpret the law and facts "liberally to grant benefits and narrowly to deny benefits" to further the public policy of providing benefits for unemployed workers. *Munguia v. Ariz. Dep't of Econ. Sec.*, 159 Ariz. 157, 162, 765 P.2d 559, 564 (App. 1998); see Ariz. Rev. Stat. ("A.R.S.") § 23-601.

¶16 The Board's decision reflects that it applied an incorrect legal standard. The decision concludes that because Bednorz "did not perform her work *with ordinary care*, she was discharged for misconduct in connection with the employment." (Emphasis added.) Mere lack of ordinary care, though, is not the proper standard.

¶17 An employer has the burden of proving that an employee was discharged for disqualifying reasons. *Ross v. Ariz. Dep't*

of Econ. Sec., 171 Ariz. 128, 129, 829 P.2d 318, 319 (App. 1991); see also Ariz. Admin. Code ("A.A.C.") R6-3-51190(B)(2). An employee is disqualified from receiving benefits if, *inter alia*, her discharge was due to "willful or negligent misconduct connected with the employment." A.R.S. § 23-775(2).

¶18 Willful or negligent misconduct includes "[r]efusal or knowing failure to perform reasonable and proper duties assigned by the employer." A.R.S. § 23-619.01(B)(4).¹ Various provisions of the Arizona Administrative Code illustrate the types of behaviors that may constitute "willful or negligent misconduct." Provision R6-3-5105(A)(2)(a), for example, states that "[i]ndifference to and neglect" of duties may suffice. We assume, without deciding, that this Code provision is consistent with the statutory definition of willful or negligent misconduct, in part because it requires both indifference and neglect.

¶19 The Board's dissenting member wrote persuasively and at length to explain his belief that Facility Source failed to carry its burden of proof. We need not, however, address all of the issues raised in the dissent. Although we will affirm the

¹ There are other statutory definitions for willful or negligent misconduct, including repeated intoxication, insubordination, dishonesty, criminal conduct, and acts of violence. A.R.S. § 23-619.01(B)(1)-(9).

Board's decision if it was correct for any reason, we conclude that no reasonable interpretation of this record establishes willful or negligent misconduct.

¶10 Millia testified that Bednorz made "a lot of data entry errors" and more errors than the "ordinary person."² Even accepting this testimony as true, it does not establish indifference to or knowing neglect of job duties. As the dissenting Board member noted, Facility Source did not provide a written or verbal job description for Bednorz's position. It did not establish that a person in that position, with Bednorz's level of training, would have performed at a different level after only two months on the job--factors that are relevant in assessing indifference, refusal to perform, or knowing failure to perform.³ Bednorz's testimony that she was doing the job without "complete training" was corroborated by a co-worker.

² As the dissenting Board member noted, the record includes only one document identifying deficiencies in Bednorz's performance--the email quoted *supra*. Although Millia testified she emailed Bednorz on other occasions, those messages are not part of the record. We thus cannot determine whether Bednorz indeed repeated the same errors over time--a factor that would bear on whether she demonstrated both indifference to *and* neglect of duties.

³ Despite uncontroverted evidence to the contrary, the Appeals Tribunal found that Bednorz had worked as AP lead for roughly four months at the time of her discharge. The Board initially accepted this finding of fact. After Bednorz once again identified this finding as erroneous (having previously raised it in her initial appeal to the Board), the Board stated that, "[e]ven if [Bednorz] did not become lead until the end of February, she worked in accounts payable for approximately four

¶11 Facility Source presented no evidence of prior unsatisfactory work performance. See A.R.S. § 23-619.01(D) ("In evaluating misconduct, a claimant's prior history of employment with the same employer shall be considered."). Millia admitted Bednorz "had her nose to the grindstone," but characterized her as "just working slowly[.]" A work colleague confirmed that Bednorz was "very diligent," that she "[a]bsolutely" tried to do her best, and that she was punctual. Bednorz testified she had an "overwhelming" volume of work. A former project manager corroborated this claim, testifying the quantity of work would have made it difficult for anyone to completely succeed in the AP lead position. He also testified there was a relatively explosive increase in the work volume when Bednorz came into the position.

¶12 Appellee correctly notes that Bednorz admitted failing to enter correct invoice amounts and codes at times and having "no excuse" for failing to catch certain errors. Bednorz also testified, though, that she would have fixed any error she caught and that she believed entering a high volume of data was the priority. After receiving the March 25 email, Bednorz

months and was aware of the requirements of the position." However, Facility Source did not establish the job duties of an AP clerk as compared to an AP lead, so the inference that Bednorz should have known the lead position based on her time working with accounts payable does not find support in the record.

sought help from her supervisor and believed she was doing her job correctly.

¶13 We assume that Facility Source's dissatisfaction with Bednorz's work performance was both genuine and reasonable. However, the standard for discharging an employee differs from the standard for establishing work-related misconduct sufficient to disqualify an employee from unemployment benefits. See, e.g., *Ariz. Dep't of Econ. Sec. v. Magma Copper Co.*, 125 Ariz. 389, 393, 609 P.2d 1089, 2094 (App. 1980) (holding that disqualification for misconduct is in the nature of a forfeiture or penalty provision and should be narrowly construed), *superseded by statute on other grounds*, A.R.S. § 23-619.01, as recognized in *Anderson v. Ariz. Dep't of Econ. Sec.*, 151 Ariz. 350, 353, 354, 727 P.2d 845, 848, 849 (App. 1986). Even when viewed in the light most favorable to upholding the decision, the evidence presented below is inconsistent with a finding that Bednorz was indifferent to her job duties or that she willfully or knowingly failed to perform them. This is especially true given our duty to interpret the law and facts "liberally to grant benefits and narrowly to deny benefits." *Munguia*, 159 Ariz. at 162, 765 P.2d at 564.

CONCLUSION

¶14 We reverse the denial of benefits and remand for an award of appropriate benefits to Bednorz. Bednorz requests

attorneys' fees and costs on appeal but does not state the legal basis for a fee award. We therefore deny her request. See *Roubos v. Miller*, 214 Ariz. 416, 420, ¶ 21, 153 P.3d 1045, 1049 (2007) (a party requesting fees must state the statutory or contractual basis for the award); *Ezell v. Quon*, 224 Ariz. 532, 539, ¶¶ 30-31, 233 P.3d 645, 652 (App. 2010) (a general request for attorneys' fees does not constitute a claim pursuant to statute, decisional law, or contract, as required by Rule 21, Arizona Rules of Civil Appellate Procedure). As the prevailing party, however, Bednorz is awarded her appellate costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

/s/

MARGARET H. DOWNIE, Judge

CONCURRING:

/s/

DANIEL A. BARKER, Presiding Judge

/s/

MICHAEL J. BROWN, Judge