Cite as 2013 Ark. App. 381

ARKANSAS COURT OF APPEALS

DIVISION II
No. E-12-368

Opinion Delivered June 5, 2013

JULIE IVY
APPELLANT

V.

DIRECTOR, DEPARTMENT OF WORKFORCE SERVICES, and DECCO CONTRACTORS
APPELLEES

APPEAL FROM THE ARKANSAS BOARD OF REVIEW
[NO. 2011-BR-00882]

AFFIRMED

WAYMOND M. BROWN, Judge

Julie Ivy appeals from the Arkansas Board of Review's denial of unemployment benefits after it found that appellant was discharged for misconduct. Ivy worked as a payroll clerk for eleven years, during which time she was responsible for, among other things, notification to insurance companies when an employee was laid off or terminated from employment. On January 7, 2012, Ivy was discharged for not informing the insurance carriers of employee separations dating back to July 2011. This caused her employer to pay premiums for employees who had not been employed for four or more months and also precluded COBRA notice to former employees. The Department of Workforce Services denied benefits, concluding that Ivy was discharged for misconduct in connection with her work. The Board of Review upheld that decision, and this appeal followed. Finding no error, we affirm.

Appellant raises three points for reversal that all relate to the standard of review this court follows and will be addressed collectively.[1] On appeal, we review the findings of the Board of Review and affirm if they are supported by substantial evidence.[2] Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[3] We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings.[4] Even when there is evidence on which the Board might have reached a different decision, the scope of judicial review is limited to a determination of whether the Board could reasonably reach its decision on the evidence before it.[5] In our review, we do not pass on the credibility of witnesses; that is a matter that is left to the Board of Review.[6]

Whether an employee's actions constitute misconduct in connection with the work sufficient to deny unemployment benefits is a question of fact for the Board.[7] A person shall

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[1]Appellant contends that the Department's failure to respond to her "clearly wrong" standard of review argument requires this court to adopt her conclusion. Without reference to citation of authority for her argument, this court will not consider it. *Hicks v. Madden*, 322 Ark. 223, 908 S.W.2d 90 (1995).

[2] *Crisp v. Dir.*, 2013 Ark. App. 219; *Bergman v. Dir.*, 2010 Ark. App. 729, 379 S.W.3d 625; *Walls v. Dir.*, 74 Ark. App. 424, 49 S.W.3d 670 (2001).

[3] *Id.*

[4]*Id.*; *Lovelace v. Dir.*, 78 Ark. App. 127, 79 S.W.3d 400 (2002).

[5] *Perdrix-Wang v. Dir.*, 42 Ark. App. 218, 856 S.W.2d 636 (1993).

[6] *Crisp*, *supra*; *Bergman*, *supra*.

[7] *Thomas v. Dir.*, 55 Ark. App. 101, 931 S.W.2d 146 (1996).

be disqualified from receiving unemployment benefits if it is determined that the person was discharged from his or her last work on the basis of misconduct in connection with the work.[8] The employer has the burden of proving by a preponderance of the evidence that an employee engaged in misconduct.[9] "Misconduct" involves disregard of the employer's interest, violation of the employer's rules, disregard of the standards of behavior the employer has a right to expect of its employees, and disregard of the employee's duties and obligations to the employer.[10] We have long held, however, that for purposes of unemployment insurance, the definition of misconduct requires more than mere inefficiency, unsatisfactory conduct, failure in good performance as a result of inability or incapacity, inadvertencies, ordinary negligence in isolated instances, or good-faith errors in judgment or discretion.[11] That is, conduct that may well provide a sufficient basis for the discharge of an employee may not be sufficient to deny that employee unemployment benefits. The two inquiries are entirely different. To conclude that there has been misconduct for unemployment-insurance purposes, we have long required an element of intent: mere good-faith errors in judgment or discretion and unsatisfactory conduct are not misconduct unless they are of such a degree or recurrence as to manifest culpability, wrongful intent, evil design, or intentional disregard of an employer's interest.[12]

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[8] Ark. Code Ann. §11-10-514(a)(1) (Supp. 2011).

[9] *Grigsby v. Everett*, 8 Ark. App. 188, 649 S.W.2d 404 (1983).

[10] *Garrett v. Dir.,* 2013 Ark. App. 113.

[11] *Id.*

[12] *Id.*

Here, appellant was a payroll clerk for eleven years and was responsible for adding and removing employees to or from insurance coverage. She had received training on this aspect of her duties and knew what was required of her. Her employer became aware that it was being billed insurance premiums for employees who had ended their employment several months earlier. In October, appellant was directed to correct the problem immediately, both orally and in written communication in the form of electronic mail. Two months later, the employer again noticed premiums were still being assessed for the same employees. A second conversation with appellant occurred, and when questioned about whether she had notified the COBRA carrier, her response was "not yet," but that she would get to it "the next day." Another electronic mail message was sent to Ivy on December 13, 2011, as a follow-up to the conversation, with instructions to fix the problem immediately.

When the employer received another billing statement from the insurance company on January 6, 2012, it noticed it was still being billed for employees no longer working for it. A subsequent call to the COBRA carrier revealed they had not been contacted by Ivy about sending legal notices to former employees. Appellant was terminated the following day.

During the hearing, appellant testified that she had not sent the notifications to either cancel insurance coverage or cause a COBRA advisory to be sent to former employees. She also stated that she had been asked to correct the problem and had not done so. The employer testified that Ivy acknowledged not having notified the insurance companies, said she would do so, and explained that she had been too busy.

The employer's testimony was that Ivy was told to make it a priority both because of the financial impact, approximately $1,700, and potential for fines resulting from the absent COBRA notifications. Ivy's testimony during the hearing was that she did not do as instructed because she was overworked and the office was short-staffed. The employer testified that additional help had been brought in on a temporary basis to assist with Ivy's workload. Ivy also asserted that she determined the priority of her work and did not complete the task in favor of other work.

We review the Board's findings in the light most favorable to the prevailing party and affirm the decision if supported by substantial evidence.[13] Here the Board determined that Ivy engaged in misconduct within the statutory definition by repeatedly failing to meet the standards required of her. This was not isolated misconduct attributable to mistake or ordinary negligence, but a pattern of behavior that continued over several months. Neither was it merely unsatisfactory conduct given the implications, economically and legally, of Ivy's failure to perform assigned work tasks.

In unemployment-compensation jurisprudence, misconduct is (1) disregard of the employer's interests, (2) violation of the employer's rules, (3) disregard of the standards of behavior that the employer has a right to expect of his employees, and (4) disregard of the employee's duties and obligations to the employer.[14] The circumstances here demonstrate that Ivy made a conscious decision to not perform the insurance notifications despite the cost

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[13] *Clark v. Dir.,* 83 Ark. App. 308, 126 S.W.3d 728 (2003).

[14] *Maxfield v. Dir.*, 84 Ark. App. 48, 129 S.W.3d 298 (2003).

to her employer for not doing so and despite having been asked to handle the task "immediately" on more than one occasion. Ivy did not inform the employer that the matter was not corrected; rather she allowed the employer to discover it only as the billing statements continued to arrive with terminated or laid-off employees still listed. When confronted, she acknowledged she had not done as instructed, committed to notifying the insurance carrier the next day, and then did not. This is precisely what is meant by misconduct connected with the work, and the Board's decision to deny benefits on this basis is supported by the record.

The Board could, and did, reasonably reach its decision on the record before it.

Affirmed.

GLADWIN, C.J., and HIXSON, J., agree.

Cullen & Co., PLLC, by: *Tim J. Cullen*, for appellant.

Phyllis Edwards, for appellee Artee Williams, Director of Department of Workforce Services.