

ARKANSAS COURT OF APPEALS

DIVISION IV

No. E-12-966

DENISE SMITH

APPELLANT

V.

DIRECTOR, ARKANSAS
DEPARTMENT OF WORKFORCE
SERVICES, and NW ARKANSAS
FEDERAL CREDIT UNION

APPELLEES

Opinion Delivered May 29, 2013APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2012-BR-01317]

AFFIRMED

RITA W. GRUBER, Judge

Appellant Denise Smith appeals the denial of her claim for unemployment benefits. The Arkansas Board of Review denied benefits, finding that appellant was discharged from last work for misconduct in connection with the work. On appeal, appellant contends that the Board's decision is not supported by substantial evidence. We affirm the Board's denial of benefits.

Appellant had been employed by Northwest Arkansas Federal Credit Union (Credit Union) for fifteen years when she was fired on January 14, 2012. At the time of her termination, her job title was operations officer. She had held that position since October 2011, but she testified that her job duties as operations officer were identical to those she performed as office manager, which was her job title before October 2011. She was second in command behind Chief Executive Officer Janis Hanna. During the week of January 9,

2012, examiners with the National Credit Union Association (Association) conducted an audit at the Credit Union. The audit findings revealed gross mismanagement of the Credit Union, an anticipated downgrade of its CAMEL score from a 2 to a 4, and numerous instances of late payments and abuses. After issuance of the Association's findings, the Credit Union's board decided to terminate appellant's employment.¹ She was notified of her termination by a phone call from Gary Eagle, the chairman of the board of the Credit Union. The attorney for the Credit Union subsequently mailed several letters to appellant detailing the board's reasons for firing her, but he did not provide her with a copy of the Association's findings. The Credit Union's attorney stated in a letter to the Tribunal that the Association's findings were not subject to disclosure under federal law.

In spite of the Appeal Tribunal's subpoena request to Mr. Eagle that he appear as a witness at the hearing, he did not appear. The only evidence produced at the hearing was the testimony of appellant and the testimony of Becky Whitted, who succeeded Ms. Hanna as chief executive officer after appellant was fired. Ms. Whitted testified that she had been involved in an inquiry with the Credit Union about its operations and the actions or omissions by appellant and had learned that when appellant worked for the Credit Union, her responsibilities included payroll, balancing bank reconciliations, benefits, backup of the Credit Union member information, and approving and denying loans. She said that some of the bank reconciliations with appellant's signature on them had been "off" since July 2011, and she discovered that several accounting principles went directly against Generally Accepted

¹Her direct supervisor, Ms. Hanna, was also fired.

Accounting Principles. She also testified that backups of Credit Union member data were required to be made on a daily basis, were appellant's responsibility, and had not been performed since January 31, 2011, a year before the audit. She testified about several instances where employees were paid and taxes were not withheld and said that appellant cashed out her unused 2011 sick-time pay in a lump-sum payment of \$2,076 without any withholding for taxes. She stated that the Credit Union had a policy of "use it or lose it" and did not allow employees to cash out unused sick days and that the only other employee who cashed out sick-time pay was Ms. Hanna. She also testified that several monthly bills were consistently paid late, requiring payment of late fees. Ms. Whitted stated that appellant approved a loan for Ms. Hanna without perfecting a lien on the loan, violating the Credit Union's policy requiring a lien on all loans and exposing the Credit Union to a potential loss. Appellant also obtained a loan without ordering an appraisal and instead using an estimated market value of her home, which violated the Credit Union policy and allowed her to borrow thousands more dollars than should have been authorized. Finally, Ms. Whitted testified that appellant and Ms. Hanna had overdraft lines of credit for their checking accounts but were not charged a fee when they overdrew their accounts, contrary to the Credit Union's policies. To prevent paying fees, appellant and Ms. Hanna would reverse the fee charged on each other's accounts. Ms. Whitted opined that all of these matters constituted gross mismanagement.

Appellant then testified that she received a letter from the Credit Union's attorney listing seven reasons for her termination. She testified that she did not understand what most of these things regarded: specifically, she stated that she was not responsible for paying the

Credit Union's bills, disbursing funds, handling payroll, or writing checks. She admitted that she had an overdraft line of credit and that all of her overdraft fees were reimbursed but said that Ms. Hanna told her that employees and board members were not required to pay fees. She also admitted that it was her responsibility to conduct backups, but stated that the responsibility to back up member information fell to many employees and not only to her. While not familiar with the loan to Ms. Hanna referenced by Ms. Whitted, she admitted that she was responsible for some loans to Ms. Hanna. She testified that she received a lump-sum payment for unused sick-leave, that she knew that she and Ms. Hanna were the only employees to receive a cash-out for sick leave, but that Ms. Hanna told her that she and Ms. Hanna were "grandfathered in" even though the practice had been discontinued.

The Board found that appellant was discharged from last work for misconduct in connection with work due to serious mismanagement of the business. The Board also found that her actions were within her control and were a disregard of the employer's best interest.

On appeal, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings of fact. *West v. Dir.*, 94 Ark. App. 381, 383, 231 S.W.3d 96, 98 (2006). The findings of fact of the Board of Review are conclusive if they are supported by substantial evidence. Ark. Code Ann. § 11-10-529(c)(1) (Supp. 2011); *Perry v. Gaddy*, 48 Ark. App. 128, 129, 89 S.W.2d 73, 74 (1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *West*, 94 Ark. App. at 383, 231 S.W.2d at 98. Even when there is evidence upon which the Board might have reached a different decision, the scope of judicial review is limited to a

determination of whether it could have reasonably reached its decision based upon the evidence before it. *Id.* Issues of credibility of witnesses and weight to be afforded their testimony are matters for the Board to determine. *Drennan v. Director*, 2012 Ark. App. 510, at 2.

Appellant contends on appeal that the Board's finding of misconduct is not supported by substantial evidence because Ms. Whitted did not begin working for the Credit Union until after appellant had been fired. Further, she claims that she was fired because of irregularities discovered by the Association examiners, and the Association's findings from the investigation were not introduced into evidence. She argues that there was not evidence of intentional misconduct and that even serious mismanagement does not necessarily equate to misconduct.

Arkansas Code Annotated section 11-10-514(a)(1) (Supp. 2011) provides that a person shall be disqualified from receiving unemployment benefits if the person is discharged from his or her last work for misconduct in connection with the work. "Misconduct," for purposes of unemployment compensation, involves (1) disregard of the employer's interest, (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 his employer. *Fulgham v. Dir.*, 52 Ark. App. 197, 199, 918 S.W.2d 186, 188 (1996). 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. *Thomas v. Dir.*, 55 Ark. App. 101, 103, 931 S.W.2d 146, 147 (1996).

The Credit Union's statement to the Department of Workforce Services provided that appellant was fired for gross mismanagement of the Credit Union revealed by the Association's findings after its investigation. Although Ms. Whitted was not employed by the Credit Union when appellant was fired, she testified that she had conducted an inquiry into the Credit Union's operations and the actions and omissions by appellant. She testified to numerous instances of mismanagement by appellant, many of which appellant admitted in her testimony, although appellant denied knowing that her actions were in violation of the Credit Union's policies. Issues of credibility of witnesses and weight to be afforded their testimony are matters for the Board to determine. *Drennan*, 2012 Ark. App. 510, at 2. Without restating all of the testimony, we hold that the Board could have reasonably reached its decision based on the evidence before it. Accordingly, substantial evidence supports the Board's findings, and we affirm its denial of unemployment benefits.

Affirmed.

GLOVER and VAUGHT, JJ., agree.

Stephen Lee Wood, P.A., by: *Stephen Lee Wood*, for appellant.

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

Kutak Rock LLP, by: *J.R. Carroll* and *Samantha B. Leflar*, for appellee Northwest Arkansas Federal Credit Union.