

DIVISION I

E06-257

September 26, 2007

ANDY CLARK

APPELLANT

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW [NO. 2006-BR-
01311]

V.

ARKANSAS DEPARTMENT OF
WORKFORCE SERVICES

APPELLEE

REVERSED AND REMANDED

The question in this unemployment-compensation case is whether the termination of appellant's employment for his calling in sick three hours after start time in violation of his employer's policy constitutes misconduct connected with the work. The Arkansas Board of Review concluded that it was misconduct on the strength of its finding that appellant was given a written final warning after two previous instances of late call-ins expressly stating that any subsequent violation of this policy would result in termination. We reverse and remand for additional findings because the Board failed to find facts in sufficient detail to permit a meaningful review of its decision.

The findings of fact of the Board of Review are conclusive if they are supported by substantial evidence. We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. 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 the Board could reasonably reach its decision upon the evidence before it. *Cowan v. Director*, 56 Ark. App. 17, 18-19, 936 S.W.2d 766, 767 (1997).

We cannot make such a determination in this case because the Board failed to make adequate findings of fact to support its decision. Clearly, a willful failure to call in before an absence would be a violation of the rules as interpreted in the warning letter received by appellant. The warning letter also establishes the work-relatedness in stating that:

The contribution of each employee is needed every day they are scheduled to work and is vital to the overall success of the Company, and when an employee is absent the Company's ability to serve its customers is negatively impacted. Additionally, this places an extreme burden on the remainder of the staff to provide our customers with quality customer service.

However, *Walls v. Employment Security Dept.*, 74 Ark. App. 424, 49 S.W.3d 670 (2001), holds that failing to comply with such a policy is not misconduct in the absence of any evidence that it was motivated by "an intentional or deliberate violation, a willful or wanton disregard, or carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design." *Id.* Here, the Board found that appellant's repeated failures to report absences in a timely fashion violated a standard of care that the employer had a right to expect, but made no finding as to whether the final instance that resulted in termination was a willful and wrongful act or instead the result of an inability to comply because of his illness. The lack of any such finding is especially significant in that the Board did find that appellant was in fact seriously ill when he was terminated, so much so that the Board ruled that appellant was

ineligible for unemployment benefits for that week because his illness rendered him unavailable for work.

The Board may not simply issue orders based on unexplained conclusions. Instead, the Board must find as facts the basic component elements on which its conclusion is based. A finding of fact sufficient to permit meaningful review is a simple, straightforward statement of what happened. It should contain all of the specific facts relevant to the contested issue or issues so that the reviewing court may determine whether the Board has resolved these issues in conformity with the law. *Ferren v. Director*, 59 Ark. App. 213, 956 S.W.2d 198 (1997). Because we cannot make that determination in this case, we reverse and remand for the Board to make sufficient findings of fact to permit appellate review.

Reversed and remanded.

HART and MILLER, JJ., agree.