

ARKANSAS COURT OF APPEALS

DIVISION II

No. E11-64

HELPING HAND CHILDREN'S
CENTER

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, and DANA
C. WHITE

APPELLEES

Opinion Delivered November 16, 2011

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[2010-BR-00518]

AFFIRMED

DAVID M. GLOVER, Judge

Appellant Helping Hand Children's Center appeals from a Board of Review decision awarding unemployment benefits to Dana White. As its sole point of appeal, Helping Hand contends that the Board erred in awarding benefits to White because she was discharged for misconduct in connection with her work. We affirm.

Background

The facts of this case are undisputed and can be stated fairly briefly. Helping Hand hired Dana White to serve as an early-childhood special-education teacher on June 1, 2005. The employee handbook provided that she must be able to pass a background check and that she should avoid engaging in any outside activity that would create a potential conflict of interest with Helping Hand. She supervised two classes of three- and four-year-old children.

A report of an alleged incident of child abuse involving White was received by the Arkansas State Police on October 29, 2009. The report was made by White's husband and seventeen-year-old daughter, and on November 24, 2009, the state police gave notice to White of its investigative determination, explaining that a "preponderance of the evidence indicates that this allegation should be determined true and that [White's] name should be put in the Child Maltreatment Central Registry as an offender on a true report." The notice went on to explain that a "person listed as an 'offender in a true investigative report' has the right to receive notice and request an administrative hearing before his or her name is placed in the Central Registry."

On November 30, 2009, White reported the situation to Helping Hand and provided a copy of the police report. She explained that her daughter had been receiving psychological treatment since fourth grade and was currently being treated in Ohio. She told Helping Hand that she planned to appeal the decision, that her name would not appear on the registry until her appeal was heard, and that if she prevailed, it would never appear on the list. White submitted her notice of appeal from the determination on December 2, 2009.

Helping Hand's office manager contacted its childcare-licensing specialist to alert the state regulatory agency of the situation and get guidance on how to handle it. The office manager explained that she was instructed by the licensing specialist that White could not be employed in any capacity at the school and that White should be terminated immediately, which was done.

The appeal hearing on the police report was scheduled for April 2010, which was after the Board of Review issued its decision in this case.

Standard of Review

The issue of misconduct is a question of fact for the Board of Review to determine. *Washington Reg'l Med. Ctr. v. Director*, 64 Ark. App. 41, 979 S.W.2d 94 (1998). On appeal, the findings of fact made by the Board are conclusive if they are supported by substantial evidence. *Id.* Substantial evidence is defined as such evidence as a reasonable person might accept as adequately supporting a conclusion. *Id.* We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. *Id.*

As its sole point of appeal, Helping Hand contends that the "Arkansas Board of Review incorrectly applied Arkansas Code Annotated section 11-10-514 when it granted Dana White unemployment benefits despite her misconduct that was in connection with the work expected to be performed at appellant Helping Hand Children's Center." We disagree.

Arkansas Code Annotated section 11-10-514 (Supp. 2009) provides in pertinent part:

Disqualification — Discharge for misconduct.

(a)(1) If so found by the Director of the Department of Workforce Services, an individual shall be disqualified for benefits *if he or she is discharged from his or her last work for misconduct in connection with the work.*

(Emphasis added.) In reaching its decision to award White unemployment benefits, the Board explained:

When a claimant is discharged from the employment, the employer has the burden of proving by a preponderance of the evidence that the claimant committed misconduct connected with the work. *Grigsby v. Everett*, 8 Ark. App. 188, 649 S.W.2d 404 (1983). In order to find misconduct, the Board must determine that there was an intentional or deliberate violation of the employer's rules; a willful or wanton disregard of the standards of behavior which an employer has the right to expect of his employees, or the employee's duties and obligations to his employer; or carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. *A. Tenenbaum Co. v. Director of Labor*, 32 Ark. App. 43, 796 S.W.2d 348 (1990). *Compare Washington Regional Medical Center v. Director*, 64 Ark. App. 41,

979 S.W.2d 94 (1998), a case in which the Arkansas Court of Appeals held that even though the employer was required by the State of Arkansas to no longer employ the claimant as a respiratory therapist, the claimant's inability to pass a certification examination was not an intentional act and therefore, was not misconduct.

In this case, the State Police issued an investigative determination that held an allegation of sexual abuse against the claimant should be determined as true. While the employer might have no longer been able to employ the claimant due to the State Police determination, the claimant denied the allegation and no evidence to support the allegation was submitted as evidence in this case. Accordingly, the Board finds that the employer did not establish by a preponderance of the evidence that the claimant was discharged for an act of misconduct so as to disqualify the claimant from receiving unemployment insurance benefits.

Here, the notice to White of the state police investigative determination explained that she had the right to an administrative hearing before her name would be placed on the Child Maltreatment Central Registry. She sought such a review, but her hearing had not taken place before Helping Hand discharged her and denied her entitlement to unemployment benefits. Helping Hand relied solely on the investigative determination as support for its decision that she could no longer pass the required background check, and that she had accordingly engaged in misconduct, which it contended disqualified her from receiving unemployment benefits. Helping Hand presented no independent evidence of abuse apart from the "true report." Helping Hand, as her employer, had the burden of proving misconduct, and the Board found as fact that it had not met that burden. We conclude that the Board's finding is supported by substantial evidence.

Affirmed.

HART and MARTIN, JJ., agree.