STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE BERGEN,

Petitioner-Appellant,

v

MICHIGAN BELL TELEPHONE and DEPARTMENT OF CONSUMER & ENERGY SERVICES, a/k/a UNEMPLOYMENT AGENCY,

Respondents-Appellees.

UNPUBLISHED
November 17, 2000

No. 220796
Kent Circuit Court
LC No. 98-010917-AE

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Appellant Lawrence Bergen appeals by leave granted the order of the Kent Circuit Court affirming the decision of the Michigan Employment Security Commission Board of Review, which concluded that he was discharged for misconduct and unqualified for unemployment compensation benefits in accordance with MCL 421.29; MSA 17.351. We affirm.

Appellant went to work for Michigan Bell Telephone's Detroit office in 1993 and was transferred to the Holland office in 1995. Appellant worked in Holland as a technician and his responsibilities included the installation and repair of telephone lines. On appellant's first day in the field, he had a traffic accident with a company vehicle. The accident was appellant's fault. Appellant received a verbal warning. However, the verbal warning was changed to a written warning when appellant's supervisor learned, after filing a company accident report, appellant had failed to reveal that he had two prior automobile accidents with company vehicles.

In addition, a few weeks later, appellant was required to work eight hours of overtime on a Sunday or to work a regularly scheduled day off. Apparently, overtime was required because a storm had caused numerous customers to lose telephone service. Appellant chose to work Sunday but left after working only 5 ½ hours. Appellant admitted he left early because he did not like the way he was being dispatched. Appellant's supervisor, Joke Melville, explained that appellant violated company policy by leaving early and by failing to notify her that he was leaving. Melville also stated she had received a customer complaint that day that appellant was at the customer's home but was not working.

Appellant's work was inspected over the course of the next several months. Melville and another supervisor found repeated violations of company policy. Specifically, appellant failed to use "term seals," secure or stabilize ground wires, and replace splices, all standard procedures. These violations continued even after verbal and written warnings by Melville. In addition, on another occasion Melville observed appellant leaving the company garage forty minutes late. When Melville questioned appellant, she noticed damage to the company truck. Melville questioned appellant, and on at least three occasions he denied damaging the company truck. However, after repeated questioning, appellant recanted and admitted he had been in an accident and failed to report it. Subsequently, appellant was terminated because of issues with his "quality, safety, and dependability."

Appellant filed for unemployment compensation benefits, and appellee Michigan Bell Telephone claimed appellant was disqualified from receiving unemployment compensation benefits because he was discharged for misconduct. Initially, the Employment Security Commission determined appellant was qualified to receive unemployment compensation benefits. This decision was affirmed by the hearing referee. However, on appeal to the Employment Security Commission's Board of Review, the decision was reversed. The board of review determined appellant had been discharged for a series of incidents that amounted to misconduct. The Kent Circuit Court affirmed. Appellant now appeals and we affirm.

The issue presented on appeal is whether appellant was appropriately disqualified for unemployment compensation benefits based on a finding of misconduct. "[W]hen reviewing a lower court's review of agency action this Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Boyd v Civil Serv Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). This standard is "indistinguishable" from the clearly erroneous standard of review, which requires reversal, if after a review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made. *Id*. at 234-235.

The Employment Security Act is "remedial and was designed to 'safeguard the general welfare through the dispensation of benefits intended to ameliorate the disastrous effects of involuntary employment,'" *Korzowski v Pollack Industries,* 213 Mich App 223, 228-229; 539 NW2d 741 (1995), quoting *Tomei v General Motors Corp*, 194 Mich App 180, 184; 486 NW2d 100 (1992). The applicable provision of the act dealing with disqualification, MCL 421.29; MSA 17.531, states:

> (1) An individual is disqualified from receiving benefits if he or she:
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> * * *
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> (b) Was discharged for misconduct connected with the individual's work or for intoxication while at work unless the discharge was subsequently reduced to a disciplinary layoff or suspension.

This provision should be narrowly construed. *Korzowski*, *supra* at 229. Additionally, the employer bears the burden of proving misconduct. *Id.*

> "'The term misconduct . . . is limited to conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such a degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute.'" [*Razmus v Kirkhof Transformer,* 137 Mich App 311, 315; 357 NW2d 683 (1984), quoting *Carter v Employment Security Commission,* 364 Mich 538, 541; 111 NW2d 817 (1961), quoting from *Boynton Cab Co v Neubeck,* 237 Wis 249, 259-260; 296 NW 636 (1941).]

Misconduct can be established if the "series of acts under scrutiny, considered together, evince a wilful disregard of the employer's interests." *Christophersen v Menominee,* 137 Mich App 776, 781; 359 NW2d 563 (1984). "To hold otherwise would allow for unemployment compensation under circumstances where an individual engages in an infinite number of workplace infractions, thereby causing strife in the workplace and justifying discharge. Allowing for compensation under these circumstances is at odds with the declared policy of the MESA to benefit persons unemployed through no fault of their own." *Id.*

We find the record contains competent, material, and substantial evidence supporting the finding that appellant was discharged for misconduct. Appellant's violations of company policy were the product of choice. Appellant left early on one occasion instead of working the required eight hours of overtime. Appellant admitted he left early because he did not like how he was being dispatched. Even more telling was appellant's half-hearted attempt to notify his supervisor he was leaving early, despite the numerous opportunities he had to contact her.

Further, appellant was repeatedly involved in traffic accidents with company vehicles, despite attending at least two defensive driving classes. Certainly, the record indicates that two traffic accidents were not appellant's fault and occurred before appellant was transferred to Holland. However, appellant was still at fault for the other two traffic accidents. Moreover, after the third traffic accident, appellant informed his supervisor of the accident but failed to reveal the two prior traffic accidents. Melville testified she learned about the other two accidents only after filing a company accident report. Most importantly, appellant neglected to report the fourth traffic accident to his supervisor and in fact, appellant lied to his supervisor when asked how the damage occurred.

Finally, appellant's work was repeatedly incomplete and unsatisfactory. Admittedly, unsatisfactory work alone does not amount to misconduct. *Carter, supra* at 541. Nonetheless, "[a]n employee's continual violations of an employer's rules may amount to a substantial disregard of the employer's interests." *Razmus, supra* at 316, quoting *Booker v Employment Security Comm,* 369 Mich 547; 120 NW2d 169 (1963). See also *Watson v Holt Public Schools,*

160 Mich App 218, 222; 407 NW2d 623 (1987) (repeated violations occurring after a reprimand rises to the level of misconduct).

Appellant's work was consistently unsatisfactory, in spite of repeated warnings from his supervisor. Melville indicated appellant regularly failed to secure ground wires and replace splices. These repeated errors, at a minimum, show a substantial disregard of the employer's interest, particularly where, as in this case, the work product was not the result of good-faith errors or a lack of training.

We note appellant also argues he was terminated in violation of an agreement that the union reached with appellee Michigan Bell Telephone. Essentially, the agreement stated appellant would be given six months to improve his job performance and would only be disciplined for major service affecting deviations. Appellant claims this agreement was violated because he was terminated well before this six-month period expired. This Court declines to address this argument. Appellant has not raised this issue in his question presented for review and has therefore failed to preserve the issue for appellate review. MCR 7.212(C)(5); see also, e.g., *Phinney v Perlmutter*, 222 Mich App 513, 564; 564 NW2d 532 (1997).

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin