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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-889

Filed: 5 April 2016

Davidson County, No. 14 CVS 03292

FREDDIE HUFF, Petitioner-Appellee,

v.

NORTH CAROLINA DEPARTMENT OF COMMERCE, DIVISION OF
EMPLOYMENT SECURITY, Respondent-Appellant.

Appeal by Respondent from order entered by Judge Theodore S. Royster, Jr. in
Davidson County Superior Court. Heard in the Court of Appeals 13 January 2016.

*Employment Security Commission of North Carolina by General Counsel Jason
J. Kaus and Regina S. Adams, for respondent-appellant*

Randolph M. James, P.C., by Randolph M. James, for petitioner-appellee.

DIETZ, Judge.

Freddie Huff is a former State Trooper. Huff received a pair of state-issued shoes as part of his trooper uniform. The shoes were uncomfortable so Huff bought a more expensive pair with his own money and sold his state-issued shoes on eBay to partially offset the cost of his new shoes.

Huff's employer, the Department of Public Safety, later learned that Huff sold his state-issued shoes and fired him for violating agency policy. Huff applied for

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unemployment benefits and ultimately was denied benefits by the Board of Review. Huff appealed to the trial court, and the court reversed the Board's decision and ordered that Huff receive unemployment benefits.

As explained below, we affirm the trial court's order. Although Huff's conduct may have violated department policy, the Board of Review's findings establish that Huff sold his state-issued shoes on eBay in good faith, believing that it was common for state troopers to sell their old gear to purchase better equipment at the trooper's own expense. The Board of Review erred in concluding that this policy violation was "misconduct," which the relevant statute defines as "a willful or wanton disregard of the employer's interest." Accordingly, we affirm the trial court's determination that Huff was entitled to unemployment benefits following his termination.

Facts and Procedural History

Freddie Huff became a North Carolina State Trooper on 17 March 2013. As a part of his orientation and training, Huff received his trooper uniform, including a pair of low-cut oxford style shoes. The shoes were uncomfortable for Huff to wear on duty so Huff purchased a pair of \$110.00 Bates Chukka boots, a style of boot previously used by the State Highway Patrol and often associated with law enforcement and military uniforms.

Huff tried unsuccessfully to give his state-issued shoes away but no other trooper was interested. To offset the cost of his new boots—which were far more

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expensive than the shoes provided by the State—Huff posted his state-issued shoes for sale on eBay. Huff knew that other troopers sold their state-issued shoes at Bob's Army Navy Surplus Store to offset the cost of new shoes, and Huff believed it would be no different to sell his shoes on eBay. Huff made an error when setting up the eBay auction and the shoes sold for \$0.50. Huff ultimately lost money from the cost of shipping the shoes to the successful bidder on eBay.

Internal Affairs investigators later began looking into whether Huff had improperly sold state-issued property. Huff initially denied selling any state property, but later admitted that he sold his state-issued shoes on eBay. Four months later, the Department of Public Safety fired Huff as a result of the Internal Affairs investigation.

Huff filed a claim for unemployment insurance benefits, which was initially denied on the ground that Huff was fired for “misconduct” as that term is defined in the relevant statute. An appeals referee reversed that decision and found Huff eligible for benefits. The Board of Review then reversed the appeals referee's decision. Huff appealed that decision to superior court and that court reversed the Board of Review. The Employment Security Division timely appealed to this Court.

Analysis

Much of the parties' briefing is directed at the trial court's holding that various findings of fact by the Board of Review are unsupported by the record. We need not

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reach this issue because, as explained below, accepting all of the Board of Review's factual findings as true, the agency failed to show that Huff committed "misconduct," as that term is defined in the statute. Accordingly, we affirm the trial court.

Ordinarily, an employee who has been terminated is entitled to unemployment benefits under the Unemployment Compensation Act. But an employee who is terminated for "misconduct" is not entitled to unemployment benefits. N.C. Gen. Stat. § 96-14.6. "Misconduct" is defined as "[c]onduct evincing a willful or wanton disregard of the employer's interest as is found in deliberate violation or disregard of standards of behavior that the employer has the right to expect of an employee or has explained orally or in writing to an employee." *Id.*

Here, the Board of Review concluded that "the claimant willfully misapplied the use of State property for his own personal reasons. The claimant's action was conduct evincing a willful or wanton disregard of the employer's interest and the standards of behavior which the employer had the right to expect of the claimant."

The Board's own findings undercut this conclusion. In Finding of Fact 12, the Board found that Huff bought a more expensive pair of shoes because the shoes provided by the State were uncomfortable and that Huff sold his state-issued shoes to help "defray the costs" of his new shoes:

The claimant sold the shoes because the shoes were not comfortable on the claimant's feet. The claimant bought a more expensive and comfortable pair of shoes which he paid at his own expense. The claimant intended to use the proceeds from the sale

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of the state issued shoes to defray the cost of purchasing the new shoes.

The Board also found that Huff believed “other troopers traded their shoes at Bob’s Army-Navy Surplus store for new shoes” and that Huff “did not think about returning the shoes back to” his employer.

This Court has held that “[v]iolating a work rule is not willful misconduct if evidence shows the employee’s actions were reasonable and were taken with good cause.” *Williams v. Davie Cty.*, 120 N.C. App. 160, 164, 461 S.E.2d 25, 28 (1995). “Good cause [is] a reason which would be deemed by reasonable men and women valid and not indicative of an unwillingness to work.” *Id.* (alteration in original).

Here, the Board’s findings establish that Huff’s state-issued shoes were uncomfortable so he bought a more expensive pair of shoes and sold his state-issued shoes to help defray the cost. The findings also establish that, at the time Huff did so, he believed that other troopers traded in their shoes at a private surplus shop to obtain different ones.

These findings establish that, even if Huff’s actions violated a work rule, those actions did not rise to the level of “a willful or wanton disregard of the employer’s interest.” N.C. Gen. Stat. § 96-14.6. Thus, we affirm the trial court’s holding that Huff is entitled to unemployment benefits as initially determined by the appeals referee.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).