

AFFIRM; and Opinion Filed May 31, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-17-00281-CV

KOJO NKANSAH, Appellant

V.

TEXAS WORKFORCE COMMISSION AND CITY OF DALLAS, Appellees

**On Appeal from the 95th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-03168**

MEMORANDUM OPINION

Before Justices Lang-Miers, Myers, and Boatright
Opinion by Justice Boatright

The Texas Workforce Commission denied Kojo Nkansah's request for unemployment benefits. He challenged the denial in district court. Nkansah lost on summary judgment and now appeals. We affirm the trial court's judgment.

BACKGROUND

Nkansah, a Senior Contract Compliance Administrator for the City of Dallas, was terminated from his employment and filed a claim for unemployment benefits. The Commission initially determined that Nkansah was qualified to receive unemployment compensation. The City appealed the determination and, after a hearing, the Commission's Appeal Tribunal reversed the determination and found that Nkansah's discharge resulted from "misconduct" under section 207.044 of the Texas Labor Code, which provides that a person who was discharged for

misconduct connected with his last work is disqualified from receiving unemployment benefits. TEX. LAB. CODE ANN. § 207.044 (West 2015).

Nkansah appealed the Appeal Tribunal's decision to the Commission, which affirmed the Tribunal's decision and adopted the Tribunal's findings of fact and conclusions of law. Nkansah then filed a petition with the district court seeking judicial review of the denial of his unemployment benefits. All parties filed motions for summary judgment. The trial court granted the joint motion filed by the Commission and the City.

DISCUSSION

The essence of Nkansah's first four issues is that summary judgment in favor of the City and the Commission was improper because substantial evidence did not support the Commission's decision that his discharge was due to misconduct related to his work. A trial court reviews the Commission's decision regarding unemployment benefits by trial de novo to determine whether substantial evidence supports the Commission's ruling. TEX. LAB. CODE ANN. § 212.202(a) (West 2015); *Collingsworth Gen. Hosp. v. Hunnicutt*, 988 S.W.2d 706, 708 (Tex. 1998). The Commission's unemployment compensation decisions are presumed valid, and the party seeking to set aside such a decision bears the burden to show that the decision is not supported by substantial evidence. *Harris Cty. Appraisal Dist. v. Tex. Workforce Comm'n*, 519 S.W.3d 113, 118 (Tex. 2017). "Substantial evidence" means more than a scintilla; however, the evidence does not have to preponderate in favor of the decision. *Johnson v. Tex. Workforce Comm'n*, No. 05-15-01183-CV, 2017 WL 462344, at *1 (Tex. App.—Dallas Jan. 31, 2017, pet. denied). A trial court may set aside a Commission decision only if it concludes that the decision was made without regard to the law or the facts and therefore was unreasonable, arbitrary, or capricious. *Hunnicutt*, 988 S.W.2d at 708. It may not set aside the decision solely because it would have reached a different conclusion. *Harris Cty. Appraisal Dist.*, 519 S.W.3d at 118. On appeal from summary

judgment affirming the Commission's decision, we conduct a de novo review of the summary judgment evidence to determine whether, as a matter of law, substantial evidence supports the Commission's decision. *Id.*

Nkansah argues he was not involved in any misconduct and did not violate any of the City's personnel rules or policies. However, the notice terminating his employment stated that Nkansah's discourteous and disrespectful behavior created a disturbance in the workplace, alarmed the staff, and violated the City's policies regarding acceptable conduct in the workplace. The termination notice also stated that Nkansah was insubordinate. "Misconduct" is defined by the Texas Unemployment Compensation Act to include the "violation of a policy or rule adopted to ensure the orderly work and the safety of employees." TEX. LAB. CODE ANN. § 201.012(a) (West 2015). Insubordination is misconduct. *Anderson v. Tex. Workforce Comm'n*, No. 05-02-01595-CV, 2003 WL 21350082, at *2 (Tex. App.—Dallas June 5, 2003, pet. denied). Disrupting the workplace is as well. *Johnson*, 2017 WL 462344, at *3.

The City's and the Commission's summary-judgment evidence that Nkansah was terminated for work-related misconduct included the record of the Commission's proceedings, affidavits of Nkansah's supervisors and colleagues, and business records from the City of Dallas Human Resources Department. Nkansah's direct supervisor, Rodney Beck, reported to Cynthia Rogers-Ellickson, Interim Assistant Director in the Housing and Community Service Department for the City of Dallas. Rogers-Ellickson testified by affidavit that she made the decision to terminate Nkansah. She stated that the event resulting in Nkansah's termination occurred on April 15, 2015, when Nkansah was disrespectful to his supervisor and caused a disturbance in the workplace. She also based her termination decision on the forensic review of Nkansah's work-assigned computer which revealed that he spent an egregious amount of time during work hours

conducting personal matters. She stated that Nkansah had been previously warned, and suspended, for similar behavior.

Terry Williams, Manager III in the Housing and Community Service Department for the City of Dallas, attested that on April 15, 2015, he heard Nkansah having a conversation with his supervisor Rodney Beck. Hearing that Nkansah's voice level was elevated, he went down the hall to see if everything was alright. He heard Nkansah become even louder and more belligerent.

In his affidavit, Rodney Beck, Manager II in the Housing and Community Service Department for the City of Dallas, described his meeting with Nkansah on April 15, 2015. He stated that Nkansah wanted a third person to attend the meeting as a witness but Beck refused. Beck stated they discussed some of Nkansah's projects but as the meeting progressed, Nkansah raised his voice and began making disrespectful and discourteous comments. Nkansah repeatedly interrupted Beck, told him that he did not know how to do his job, and stated that Beck needed to learn how to be a manager. Because of Nkansah's argumentative conduct, Beck concluded the meeting.

Other evidence included a City of Dallas notice suspending Nkansah in November 2014 for being disrespectful to his supervisor, being discourteous and disrespectful to other City employees, and spending too much of his work time on personal matters. Nkansah was advised in writing that future occurrences of such behavior would not be tolerated and could lead to additional disciplinary action, up to and including termination of employment. Also included was a City of Dallas Human Resources Department's investigative report into allegations that Maria Verduzco, Nkansah, and Beck violated the City's personnel rules and an administrative directive prohibiting workplace disturbances. The report described the April 15, 2015, meeting between Nkansah and Beck. As their argument escalated, Verduzco, also a City of Dallas employee, began recording the meeting on her cell phone. When the meeting abruptly concluded, Beck emerged from his office

to discover that Verduzco was recording his conversation with Nkansah. Beck asked for her cell phone; Verduzco accused him of grabbing her phone and assaulting her. The Human Resources Department conducted an investigation, interviewed numerous witnesses, and as pertinent to this case, concluded that disciplinary action should be taken against Nkansah for raising his voice and arguing with Beck.

The City notified Nkansah of a pre-termination hearing, and asked that he appear to present information regarding the allegations that he had violated the following City of Dallas personnel rules of conduct: (1) inability or unwillingness to perform assigned work satisfactorily; (2) indifference towards work; (3) theft; (4) insubordination; (5) disturbance; and (6) disregard of public trust. Following the hearing, the City notified Nkansah that he was discharged from his employment for violating those personnel rules.

In his response to the joint motion for summary judgment filed by the City and the Commission, Nkansah argued that there was no evidence to support the allegations of his misconduct and his subsequent termination. He offered three affidavits from co-workers that stated Nkansah attended the meeting with Beck on April 15, 2015, without any incident. Nkansah argues on appeal that his conduct did not amount to misconduct and that the real reason he was terminated was because he attempted to expose the misconduct of other City employees. The reason for Nkansah's termination, however, was a question for the Commission as the primary factfinder and not the trial court. *Johnson*, 2017 WL 462344, at *3. The only question before the trial court was whether there was substantial evidence to support that decision. *Hunnicut*, 988 S.W.2d at 708. The evidence showed that Nkansah's conduct was disrespectful, disruptive, and violated personnel rules. We conclude that Nkansah did not satisfy his burden to demonstrate the Commission's decision was unsupported by substantial evidence. Consequently, the trial court did not err by

granting the City's and Commission's joint motion for summary judgment. We overrule Nkansah's first, second, third and fourth issues.

In his fifth issue, Nkansah argues that the trial court erroneously failed to take action on his motion for default judgment against the City and his motion for summary judgment against the Commission and the City. On July 15, 2016, Nkansah filed a motion for default judgment against the City. The motion did not request a hearing and there is nothing in the record to indicate that Nkansah sought to schedule a hearing on the motion. The City filed its answer twelve days later, on July 27, 2016. Nkansah contends the trial court's failure to rule on his motion for default judgment unfairly allowed the City to file its answer. A trial court is required to consider and rule on a pending motion for default judgment within a reasonable time. *Davis v. West*, 433 S.W.3d 101, 108 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). What is reasonable depends on the circumstances of the case; however, appellate courts have held that a delay of one month is reasonable. *Id.* Once an answer is filed, even if it is filed after the due date, the trial court may not render a no-answer default judgment. *Davis v. Jefferies*, 764 S.W.2d 559, 560 (Tex. 1989). The filing of an answer renders moot any complaints about the trial court's prior failure to rule on the motion for default judgment. *West*, 433 S.W.3d at 109. We conclude that the trial court's twelve-day delay in ruling on Nkansah's motion was reasonable. Further, the filing of the City's answer renders Nkansah's complaint moot.

Nkansah also complains that the trial court took no action on his motion for summary judgment even though he filed his motion a month before the Commission and the City filed their joint motion for summary judgment. Summary judgment proceedings are governed by rule 166a of the rules of civil procedure. TEX. R. CIV. P. 166a. Although an oral hearing on a motion for summary judgment is not mandatory, notice of hearing or submission of a summary judgment is required. *Martin v. Martin, Martin & Richards, Inc.*, 989 S.W.2d 357, 359 (Tex. 1998). The

purpose of the notice requirement in rule 166a(c) is to allow the nonmovant to determine when a response is due. *Ready v. Alpha Bldg. Corp.*, 467 S.W.3d 580, 585 (Tex. App.—Houston [1st Dist.] 2015, no pet.). Nkansah concedes he did not notice his motion for hearing or submission. Therefore, the trial court could not properly consider Nkansah’s motion because it was never set for hearing or submission.

The trial court did not err in declining to take action on Nkansah’s motion for default judgment against the City and his motion for summary judgment against the Commission and the City. We overrule Nkansah’s fifth issue.

CONCLUSION

Having resolved all of Nkansah’s issues against him, we affirm the trial court’s judgment.

/Jason Boatright/

JASON BOATRIGT
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

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Opinion delivered by Justice Boatright.

Justices Lang-Miers and Myers
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellant KOJO NKANSAH recover his costs of this appeal from appellees TEXAS WORKFORCE COMMISSION AND CITY OF DALLAS.

Judgment entered this 31st day of May, 2018.