

# ARKANSAS COURT OF APPEALS

DIVISION II

No. E10-114

SHEILA D. JARRETT

APPELLANT

V.

DIRECTOR, DEPARTMENT OF  
WORKFORCE SERVICES and CITY  
OF SHERWOOD

APPELLEES

**Opinion Delivered** SEPTEMBER 14, 2011

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[NO. 2009-BR-01593]

AFFIRMED

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**ROBIN F. WYNNE, Judge**

Sheila D. Jarrett, in an unbriefed, pro se appeal, appeals from a decision of the Arkansas Board of Review in which the Board found that she was not entitled to unemployment benefits. We affirm the decision of the Board.

Appellant worked for the City of Sherwood from 1986 until June 2, 2009, as a dispatcher for the Sherwood Police Department. The employer has a Uniform Standards of Conduct policy that calls for compliance with all state laws and includes the right to terminate for conduct occurring outside of the workplace. Appellant's employment was terminated subsequent to her arrest on a charge of shoplifting two items from a J.C. Penney's store in North Little Rock.<sup>1</sup> She stated during the employer's internal investigation of the incident that she unintentionally removed the items from the store because her back and legs were

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<sup>1</sup>The criminal charges against appellant were unresolved as of the date of her hearing before the Arkansas Appeal Tribunal.



hurting. The employer based appellant's termination upon violations of the following rules in the Uniform Standards of Conduct: (1) Rule 4.18.0, titled Observance of Laws; (2) Rule 4.11.0, titled Dishonesty or Untruthfulness; (3) Rule 4.01.0, titled Exercising Common Sense and Affirmatively Promoting Our Values.

The Department of Workforce Services determined that appellant was not eligible for unemployment benefits, and appellant appealed that determination to the Arkansas Appeal Tribunal. Following a hearing, the Tribunal issued an opinion in which it affirmed the Department's denial of benefits based upon a finding that appellant was discharged for misconduct connected to the work. Appellant appealed the decision of the Tribunal to the Board, which affirmed and adopted the decision of the Tribunal. Appellant has now appealed to this court.

In appeals of unemployment compensation cases, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board of Review's findings. *Brooks v. Director*, 62 Ark. App. 85, 966 S.W.2d 941 (1998). The findings of fact made by the Board of Review are conclusive if supported by substantial evidence; 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 have reasonably reached its decision based upon the evidence before it. *Bennett v. Director*, 73 Ark. App. 281, 42 S.W.3d 588 (2001); *Brooks, supra*. Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion. *Bennett, supra*.



Appellant was terminated for conduct that occurred outside of the workplace. In order to find that a claimant's off-duty activities constitute misconduct connected with the work, the employer must show that the employee's conduct (1) had some nexus to the work; (2) resulted in some harm to the employer's interest; and (3) was in fact conduct that was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer. *Feagin v. Everett*, 9 Ark. App. 59, 652 S.W.2d 839 (1983).

There is substantial evidence in the record to support the Board's finding that the actions that led to appellant's dismissal constitute misconduct connected with the work. Appellant was arrested on suspicion of committing a crime. Her employer has an interest in enforcing the laws of the State of Arkansas. That interest is expressed in Rule 4.01.0 of the Uniform Standards of Conduct which states, in part, "Members shall accept full responsibility for their attitudes, behaviors, and the results of their behaviors on duty as well as off duty. Attitudes and behaviors that may not be considered wrong in private employment could be wrong in the public sector because of the need to maintain the public's confidence and trust." The decision of the Board to deny appellant's claim for unemployment benefits is affirmed.

Although we have affirmed the Board's decision, we wish to address a statement contained in the Tribunal's opinion, which was affirmed and adopted by the Board. In its opinion, the Tribunal states, "The Claimant was charged with shoplifting, and a presumption of guilt attaches to such a charge; no presumption of innocence is implied." This statement is incorrect.



Cite as 2011 Ark. App. 527

The offense known as shoplifting is embraced under conduct denominated theft in Title 5, Chapter 36 of the Arkansas Code Annotated. Ark. Code Ann. § 5-36-102(a)(8) (Supp. 2009). A person commits the offense of theft of property if that person takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner of the property. Ark. Code Ann. § 5-36-103(a)(1) (Supp. 2009). The knowing concealment, upon an actor's person or the person of another, of an unpurchased good or merchandise offered for sale by any store or other business establishment, gives rise to a presumption that the actor took the good or merchandise with the purpose of depriving the owner or another person having an interest in the good or merchandise. Ark. Code Ann. § 5-36-102(c) (Supp. 2009). The presumption contained in section 5-36-102(c) applies only to the intent element of the offense of theft, not the offense itself. There is no presumption of guilt; there is instead a presumption that the actor possessed the requisite intent for the offense of theft. If the presumption is not rebutted, the other elements of the offense must still be proven.

Affirmed.

MARTIN and HOOFFMAN, JJ., agree.