

ARKANSAS COURT OF APPEALS

DIVISION III

No. E11-110

ARKANSAS INTERNAL MEDICINE
CLINIC

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, and
KENISHA HOARD

APPELLEES

Opinion Delivered February 1, 2012

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[No. 2010-BR-00798]

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Arkansas Internal Medicine Clinic (AIMC) appeals from a Board of Review decision awarding unemployment benefits to Kenisha Hoard. AIMC contends on appeal that the Board erred in awarding benefits to Hoard because, according to AIMC's argument, Hoard voluntarily quit her employment with AIMC, or alternatively, she was discharged for misconduct in connection with her work. We disagree and affirm.

AIMC, located in Little Rock, hired Hoard to work as a medical assistant in October 2008. The employment relationship was severed in January 2010, after which Hoard filed for unemployment compensation. The Arkansas Department of Workforce Services determined on January 28, 2010, that Hoard was not disqualified from benefits because she was not discharged from her last work for misconduct in connection with the work. AIMC appealed this decision to the Arkansas Appeal Tribunal. A hearing officer held a telephone hearing on March 23, 2010, with the issue presented being whether Hoard voluntarily left her employment with AIMC or whether she was discharged or suspended with or without misconduct connected with her work.



The testimony at the hearing revealed that on January 4, 2010, snow and ice struck central Arkansas, making driving conditions hazardous. In the early morning hours of January 4, Hoard, who lived in Clarendon,¹ left text and voice-mail messages with Iffy Mogbo, the office manager of AIMC. In her messages, Hoard advised that because of the inclement weather, schools were closed and she would not be at work until 10:00 a.m. Mogbo called Hoard and told her not to worry about coming into work that day. Later that morning, Mogbo realized that Hoard had left unfinished projects at work, so Mogbo called Hoard at home, told her about the unfinished projects, and advised Hoard that she needed to come to work after all. Hoard told Mogbo that it was still snowing in Clarendon; therefore, she would not be coming into work. Mogbo contacted the Clarendon police, who reported that although the roads were passable, drivers were to be cautious on bridges. Mogbo called Hoard a third time, reported that the roads were fine, and told Hoard to come to work. Hoard declined. The parties dispute what happened next.

At the hearing, Hoard testified that during her third conversation with Mogbo, Hoard refused to come into work, to which Mogbo said, “Well, you know what you did. You just fired yourself.” Hoard further testified that Mogbo did not tell her to come to work the next day, and because Hoard thought she had been terminated on January 4, she did not go to work on January 5. When Hoard was not at work on January 5, Mogbo asked another employee of AIMC, Dominique Davis, to call Hoard and find out why she was absent. Davis testified that when she spoke on the phone with Hoard, she told Davis that she had been fired by Mogbo the day before because she did not come to work on that day.

¹Testimony at the hearing was that it was a two-hour drive from Clarendon to Little Rock.



In contrast, Mogbo denied telling Hoard that she had “fired herself” on January 4, and Mogbo testified that she expected Hoard to return to work the following day. According to Mogbo’s hearing testimony, Hoard voluntarily left her employment with AIMC when she failed to come to work on January 5.

In an opinion dated March 24, 2010, the hearing officer reversed the decision of the Department and denied benefits to Hoard. The hearing-officer’s decision was based upon his findings that Hoard voluntarily quit her employment when she failed to return to work on January 5, 2010, a regularly scheduled work day, that there was insufficient evidence that Hoard was told that she had been discharged from her employment, and that Hoard failed to establish good cause for leaving her work. Hoard appealed the hearing-officer’s decision to the Board of Review. On March 22, 2011, the Board issued its decision reversing the hearing-officer’s decision and awarding benefits to Hoard.

AIMC timely appeals from the Board’s decision. On appeal, AIMC contends that Hoard is ineligible for benefits because she voluntarily left her employment without good cause connected to the work. Alternatively, AIMC argues that if Hoard was discharged, the discharge was for misconduct related to her employment.

AIMC’s arguments are challenges to the sufficiency of the evidence supporting the Board’s decision. In *Hayden v. Director*, 2010 Ark. App. 298, this court set forth the standard of review for unemployment cases when the issues are ones of sufficiency of the evidence:

On appeal, the findings of the Board of Review are conclusive if they are supported by substantial evidence. Substantial evidence is such relevant evidence as a reasonable mind might accept to support a conclusion. We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board’s findings. Issues of credibility of witnesses and weight to be afforded their testimony are



matters for the Board of Review to determine. 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 reasonably reach its decision upon the evidence before it.

Hayden, 2010 Ark. App. 298, at 1 (citing *Lewis v. Director*, 90 Ark. App. 219, 221, 205 S.W.3d 161, 162 (2005)) (internal citations omitted). The credibility of witnesses and the weight to be accorded testimony are matters to be resolved by the Board of Review. *Id.* at 1 (citing *Williams v. Director*, 79 Ark. App. 407, 88 S.W.3d 427 (2002)).

Under Arkansas law, an individual shall be disqualified for unemployment benefits if he or she voluntarily and without good cause connected with the work left his or her last work. Ark. Code Ann. § 11-10-513(a)(1) (Supp. 2011). Based on the evidence before it, the Board found that Hoard did not quit her employment with AIMC; but rather, she was discharged by AIMC on January 4. The Board acknowledged the dispute between the parties as to whether Hoard was fired or quit. In resolving this issue, the Board weighed the credibility of the parties and ultimately found Hoard's version of events consistent and more credible. Specifically, the Board noted that Hoard's testimony at the March 2010 hearing was the same as her January 27, 2010 statement to the Department—that Mogbo told Hoard that she had "fired herself" by refusing to go to work January 4. The Board further found that Mogbo's testimony was not consistent. It noted that at the hearing, Mogbo denied discharging Hoard and never said that she told Hoard that she "fired herself" by not coming to work on January 4. However, Mogbo used the exact phrase, "she fired herself," three separate times in her statement to the Department given January 27, 2010. Based on these findings, the Board concluded that Hoard had been discharged



on January 4 by Mogbo. We hold that there is substantial evidence to support the Board's decision on this point.

After concluding that Hoard was discharged by Mogbo on behalf of AIMC on January 4, the Board then discussed whether Hoard's discharge was based on misconduct connected with the work. Arkansas Code Annotated section 11-10-514(a)(1) (Supp. 2011) provides that to qualify for unemployment insurance benefits, an individual, when discharged, must have been discharged for reason other than misconduct connected with the work. In *Johnson v. Director*, 84 Ark. App. 349, 141 S.W.3d 1 (2004), this court set forth the definition of "misconduct":

"Misconduct," for purposes of unemployment compensation, involves: (1) disregard of the employer's interest; (2) violation of the employer's rules; (3) disregard of the standards of behavior which the employer has a right to expect; and (4) disregard of the employee's duties and obligations to his employer. To constitute misconduct, however, the definitions require more than mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies, ordinary negligence in isolated instances, or good-faith errors in judgment or discretion. Instead, there is an element of intent associated with a determination of misconduct. There must be an intentional and deliberate violation, a willful and wanton disregard, or carelessness or negligence of such a degree or recurrence as to manifest wrongful intent or evil design. Misconduct contemplates a willful or wanton disregard of an employer's interest as is manifested in the deliberate violation or disregard of those standards of behavior which the employer has a right to expect from its employees.

Johnson, 84 Ark. App. at 351–52, 141 S.W.3d at 2 (internal citations omitted). 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, 45, 979 S.W.2d 94, 96 (1998).

The Board found that Hoard was terminated for a reason other than misconduct connected with the work. Due to the inclement weather, the Board found that Hoard had good reason for refusing to report to work and that her refusal under the circumstances did not constitute a willful disregard of AIMC's interests. The Board noted that the evidence



demonstrated that it had been snowing on the day in question, that police advised travelers to exercise caution on bridges, and that Hoard had to travel over at least one bridge to get to work. We hold that these findings support the Board's decision in favor of Hoard on this point.

Before closing, we acknowledge that AIMC's version of events varies greatly from the findings made by the Board. When weighing the credibility and facts in its favor, AIMC argues in its brief that "it is clear that the Board missed the mark in its decision supporting an insubordinate and habitually ineffective employee who decided to lie about the weather in her home town and thereby take her birthday off, then try to collect unemployment benefits at the employer's expense." While this statement is a proper characterization of Mogbo's testimony, the Board did not believe Mogbo, and consequently, the Board did not weigh those facts in favor of AIMC. Instead, the Board chose to believe Hoard's version of events. Such findings were questions of facts to be determined by the Board. We must affirm the Board's decision if it is supported by substantial evidence and if the Board could reasonably reach its decision based on the evidence before it, even if there was evidence on which the Board might have reached a different decision. *Kimble v. Director*, 60 Ark. App. 36, 40, 959 S.W.2d 66, 68 (1997). Based on our standard of review, we hold that there is substantial evidence to support the Board's decision and affirm.

Affirmed.

ABRAMSON and HOOFFMAN, JJ., agree.

David O. Bowden, for appellant.

Phyllis Edwards, for appellee.