

ARKANSAS COURT OF APPEALS

DIVISION I

No. E11-183

REGINALD W. MITCHELL
APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, and
ARKANSAS DEPARTMENT OF
CORRECTION
APPELLEES

Opinion Delivered February 22, 2012

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW,
[2011-BR-01611]

REVERSED AND REMANDED FOR
AWARD OF BENEFITS

DAVID M. GLOVER, Judge

Reginald Mitchell appeals from the denial of unemployment benefits following his discharge from the Arkansas Department of Correction (ADC). He was employed as a correctional officer and sought unemployment benefits after he was discharged on April 4, 2011, for “violation of published policies, unsatisfactory work performance, failure to perform or carry out work related instructions, and falsification of written/verbal statements/information.” His claim was denied, and he appealed to the Arkansas Appeal Tribunal. A telephone hearing was conducted on June 20, 2011; only Mitchell appeared and testified. The Appeal Tribunal issued its decision on June 21, 2011, concluding that ADC had not proved that Mitchell falsified records or that he failed to carry out work-related instructions, but ultimately concluding that Mitchell was discharged for misconduct in connection with the work because ADC had proved that Mitchell violated its policy



regarding entering an inmate's cell alone. Mitchell appealed to the Board of Review, which affirmed and adopted the Appeal Tribunal's decision, and provided additional discussion regarding the purported existence of such a policy.

Background

At the Appeal Tribunal telephone hearing, Mitchell testified about the events leading to his discharge. On November 26, 2010, one of his subordinates informed him that an inmate was on the floor of his cell and that there was blood around him. Mitchell went to the cell to assist and contacted the infirmary. He, another officer, and infirmary staff escorted the inmate to the infirmary. After the infirmary staff finished examining the inmate, Mitchell took the inmate back to his cell with the aid of another officer. Mitchell then completed an incident report and submitted it to his supervisor, who told him that he also had to obtain a witness statement from the inmate. When Mitchell informed the supervisor that the inmate had refused to give him a statement, the supervisor told him that the report was not complete without the inmate's statement. Mitchell returned to the inmate's cell; ordered the officer who operated the controls to open the cell door (because the inmate said he was too uncomfortable to move due to his earlier injury); and entered the cell alone to get the inmate to sign the statement. Mitchell explained that ADC policy states he must have someone to assist him if he is moving an inmate out of the cell, but that he had no intention of moving the inmate on this second entry into the cell.

The Appeal Tribunal interjected at that point that "[t]he policy states that you can't enter a cell by yourself Any, any circumstance, whether you're moving it or not." Mitchell distinguished between the first time he entered the cell (accompanied by others) and



the second time (alone), explaining that in the first instance, he knew from his experience that the inmate would have to be transported to the infirmary to be checked out and that, in the second instance, he had no intention of moving the inmate because he entered the cell only to get a signature on the inmate's witness statement.

The Appeal Tribunal asked, "Could you tell me why in his termination of employment [the warden] states in the last sentence of the first paragraph, 'policy states there must be a minimum of two officers present when entering an inmate's cell?'" When Mitchell responded, "I have a copy of the policy now that . . .," the Appeal Tribunal stated, "That's not my question, sir. My question was why would he write such a statement?"

The Appeal Tribunal determined that the only meritorious basis for Mitchell's discharge was his entry into an inmate's cell unaccompanied by other staff, *i.e.*, the violation of ADC policy and, presumably, "unsatisfactory work performance," which the Appeal Tribunal concluded amounted to misconduct.¹ In conjunction with his appeal to the Board of Review, Mitchell attempted to submit ADC policy 10.01.0, section M, which provides:

Movement: Prior to any movement out of the cell, the inmate will be strip searched in the cell, instructed to step to the middle of the cell and turn around to view the back and buttocks area to ensure that no weapon or contraband are present. The inmate will pass his clothing through the trap door to the officer for search. The inmate will then be given his boxers and instructed to dress, again in full view of the officers. The inmate will then be ordered to back to the door and placed in restraints. He will then be ordered to step back to the rear of the cell and get on his knees on the bunk and cross his legs, facing the back of the cell. The door will then be opened and

¹ADC did not appeal the Appeal Tribunal's rejection of its other bases for discharge, *i.e.*, "[t]he preponderance of the evidence indicates that the employer has *not* proven that the claimant falsified records or that he failed to carry out work-related instructions" Consequently, even though Workforce Services' brief delves into these bases in its responsive brief, we do not address them because those bases for discharge are not before us.



leg restraints will be placed on the inmate. The inmate will be moved with two (2) officers for every one (1) inmate. The cell will then be thoroughly searched and inspected. Upon return, the process will be repeated in reverse.

The Board rejected the offer of additional evidence:

The Board considered the offer of additional evidence as, in effect, a request that the Board direct that additional evidence be taken in further hearing. *See* Ark. Code Ann. S 11-10-525(c). However, the record reflects a reasonable opportunity, at the hearing before the Appeal Tribunal, for the presentation of evidence on the issues controlling the substantial rights of the parties in this matter. *See* Ark. Code Ann. SS 11-10-524(b)(1) and 11-10-526(a)(1). Thus, having considered the entire record of prior proceedings, including the testimony submitted at the hearing before the Appeal Tribunal, the Board concludes that the decision made by the Appeal Tribunal in Appeal No. 2011-AT-06207 is correct both as to findings of fact and conclusions of law, and that the Appeal Tribunal decision is hereby adopted as the decision of the Board.

Consequently, this piece of evidence was not before the Board, nor us, for consideration in resolving the issue.

Points of Appeal

- I. The Board erred in its decision to deny Mitchell unemployment benefits.
- II. The Board also erred in its conclusion that the record reflects a reasonable opportunity, at the hearing before the Appeal Tribunal, for the presentation of evidence on the issues controlling the substantial rights of the parties.

Standard of Review

On appeal, the Board of Review's findings of fact are conclusive if they are supported by substantial evidence. *Perdrix-Wang v. Dir.*, 42 Ark. App. 218, 856 S.W.2d 636 (1993). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the Board's conclusion. *Id.* We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings. *Id.* 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. *Id.*

Board's Denial of Unemployment Benefits

The gist of Mitchell's first argument is that the Board erred in denying him unemployment benefits because he was purportedly discharged for the violation of *published* policies, yet no written policy was introduced by ADC. In its decision, affirmed and adopted by the Board, the Appeal Tribunal stated, "The employer has provided documentation that employees cannot enter a cell alone." However, the only "documentation" of such a policy was the warden's April 4, 2011 termination letter to Mitchell, in which the warden states: "On November 26, 2010, you entered an inmate cell alone with no other officer present, which is a violation of policy[,]” and “[p]olicy states that there must be a minimum of two (2) officers present when entering an inmate’s cell.” Other than the warden’s termination letter, ADC offered no other evidence to support its position that it had a published policy that prohibited an officer’s entry into a cell alone under any and all circumstances. In its responsive brief, Workforce Services acknowledges: “It is unclear whether there is a written policy as to entering a prisoner’s cell for purposes other than moving the prisoner. No written policy was introduced into evidence.”

It was ADC’s responsibility to prove the basis upon which it discharged Mitchell. Yet, ADC failed to have anyone present at the Appeal Tribunal for the telephone hearing; no written rule was provided by ADC; and no other means of establishing the rule’s existence was provided. The two sentences in the warden’s termination letter to Mitchell, referencing the policy and quoted earlier in this opinion, were not sufficient to prove the policy’s



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existence under the circumstances of this case. Moreover, the Board's efforts to bolster the Appeal Tribunal's decision regarding the existence of such a policy in its opinion affirming the Appeal Tribunal are not convincing based on the record before us.

In short, if a rule that prohibits an officer's entry into an inmate's cell alone—under any circumstances—exists, it is clear that Mitchell violated it, and, considering the nature of his place of employment, the violation of such a rule could constitute misconduct. The problem here is that ADC told Mitchell that he was being discharged, in part, for the violation of a *published* policy, and then did not sufficiently prove the existence of such a policy in order to establish that Mitchell engaged in misconduct in connection with his work. Viewing the evidence in the light most favorable to the Board's decision, we conclude that reasonable minds cannot accept the evidence that was before the Board as adequate to support its decision.

Concluding, as we have, that the Board's decision is not supported by substantial evidence, we find it unnecessary to address Mitchell's second point of appeal.

Reversed and remanded for award of benefits.

VAUGHT, C.J., and GRUBER, J., agree.

Nickels' Law Firm, by: *B. Norman Williamson*, for appellant.

Phyllis Edwards, for appellee.