

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. E11-228

ALAN R. HOY

APPELLANT

V.

ARTEE WILLIAMS, DIRECTOR,  
DEPARTMENT OF WORKFORCE  
SERVICES and TYSON FOODS

APPELLEES

Opinion Delivered September 5, 2012

APPEAL FROM THE ARKANSAS  
BOARD OF REVIEW  
[NO. 2010-BR-736]

AFFIRMED

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**WAYMOND M. BROWN, Judge**

Alan Hoy, formerly a mechanical technician for Tyson Foods, appeals from a decision of the Arkansas Board of Review denying him unemployment benefits. On appeal, Mr. Hoy argues that the Board of Review erred in finding that he was discharged for misconduct within the meaning of Arkansas Code Annotated section 11-10-514. We affirm the Board's decision.

Mr. Hoy worked for Tyson Foods from June 2006 until his discharge in November 2009. The parties do not dispute the facts that led to Mr. Hoy's discharge. Tyson has a Core Safety Mandate Policy that all employees are required to follow. One procedure that all maintenance technicians are required to engage in is lock-out/tag-out (LOTO). Under Tyson's safety policy, an employee's failure to LOTO twice in a two-year period will result in termination. Hoy failed to LOTO on two separate occasions in 2009.

At the hearing, Eric Henderson, the Human Resources Manager, testified that Hoy was fired for violating the LOTO policy. According to Henderson, LOTO means that before an employee can work on equipment, the equipment must be shut off and each employee working on the equipment must place their individual lock on the equipment. Henderson testified that employees are trained on LOTO every year. He said that Hoy violated the policy in February 2009 when he reached into a jammed tortilla making unit without shutting the machine off or locking it out. Henderson stated that Hoy “said he did not stop the conveyor or lock it out because he was trying to prevent a hard jam that would break the belt and cause excessive downtime.” He said that in November 2009, Hoy worked on a Werner machine with other employees, but failed to apply his lock to the machine. Henderson stated that each person working on a machine is to apply his/her own lock, that way no one can turn on the machine while someone is still working on it. Henderson said that Hoy admitted to working on the machine in November without adding his lock.

Tim Cooper, the Complex Safety Manager, testified that employees are trained on LOTO twice a year. He stated that he conducted the investigations into Hoy’s failure to LOTO in February and November. Cooper said that LOTO was a “very common part” of Hoy’s work and that Hoy would engage in LOTO several times a day.

Ron Medina, a Production Supervisor, testified that he was present at the November incident and that he saw Hoy working on the machine. He stated that he assumed that the



lock he saw on the machine belonged to Hoy, but that he later found out that the lock belonged to the machine operator.

Bob Holt, a Production Manager, testified that he saw three persons working on a machine in November, but that he only saw two locks. He stated that at the time, Hoy was inside the machine trying to reseat a belt tension. He also said that Hoy was unable to finish the job because Hoy's supervisor, James Reaves, pulled Hoy off for not having his lock on the machine.

Hoy testified that he had been trained on LOTO; that the safety policy mandated discharge after two violations in two years; that he violated the policy in February and November 2009; and that he was subsequently discharged for the violations. He testified in pertinent part:

In February, I was going through the cooling room and noticed that tortillas were starting to jam on the rake on the end of the conveyor. When that happens you want to slightly push on those to dislodge them and keep the belt running and not shut down production. I put my hand on the edge of the belt and did not get into a place where I would have gotten caught or anything. The belts are flat, so there is nothing there to tie yourself on. I just walked in and happened to notice it. There was no one else there. I don't remember any supervisor asking me why I did not lock out. In November, I was pushing my toolbox to another unit and I passed Unit 1 and noticed that they were having trouble putting an idler roller in. It was only a matter of minutes that I was on the machine. The policy does require me to place my lock even if there are other locks on at the time. I did not attach my lock because I was stopping for just a short time. I knew the machine was shut down. I was trying to get the machine going. I was just trying to be in a hurry and get it going. I guess I wasn't thinking at the time. I just sort of stumbled on the problem in both situations. I was not sent to either machine. I just stopped to help.



Cite as 2012 Ark. App. 465

Hoy stated that he engaged in LOTO almost every day and that the incidents in February and November were the only times he did not follow procedure.

In his closing statement, Henderson stated that the safety policy “was put in effect in 2004 because of the serious injuries that occurred and the policy is to protect our team members from sustaining those injuries.”

The Board of Review determined that Hoy was discharged from his last work for misconduct connected with the work within the meaning of Arkansas Code Annotated section 11-10-514(b). The Board found that Hoy’s “failures to lock out were not simply the result of inadvertencies, but were based on deliberate decisions not to do so, which were intentional violations of the employer’s safety rules.”

Hoy concedes that he failed to LOTO in February 2009 and November 2009. He also concedes that his failures were grounds for termination under Tyson’s policy; however, he argues that it did not amount to “misconduct” as contemplated by the statute.

On appeal from the Board of Review, we do not conduct a *de novo* review; instead, we review the evidence and all reasonable inferences deductible therefrom in the light most favorable to the Board’s findings of fact.<sup>1</sup> We will affirm the Board’s findings if they are supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>2</sup> Even when there is evidence upon which the

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<sup>1</sup>*West v. Director*, 94 Ark. App. 381, 231 S.W.3d 96 (2006).

<sup>2</sup>*Id.*



Board might have reached a different decision, the scope of judicial review is limited to a determination of whether it could have reasonably reached its decision based upon the evidence before it.<sup>3</sup>

“Misconduct” includes disregard of the employer’s interests, violation of the employer’s rules, disregard of the standards of behavior that the employer has the right to expect of his employees, and disregard of the employee’s duties and obligations to his employer.<sup>4</sup> It requires 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 error in judgment or discretion.<sup>5</sup> There must be an intentional deliberate violation, a willful or wanton disregard, or carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design.<sup>6</sup>

We hold that substantial evidence supports the Board’s finding that Hoy’s failure to lock out were based on deliberate decisions not to do so. While Hoy may not have had an evil design or wrongful intent in failing to LOTO, the Board found that he intentionally violated his employer’s safety rules. We hold that the Board could have reasonably reached

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<sup>3</sup>*Id.*

<sup>4</sup>*West, supra.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.*



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its decision based upon the evidence before it and that its decision was supported by substantial evidence. Therefore, we affirm the Board's denial of unemployment benefits.

Affirmed.

WYNNE, J., agrees.

GLOVER, J., concurs.

*J. Rebecca Pratt Hass*, for appellant.

*Phyllis Edwards*, for appellee.