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ARKANSAS COURT OF APPEALS

No. E12-177

Opinion Delivered October 31, 2012

VERNIA A. VALENTINE APPELLANT V. DIRECTOR, DEPARTMENT OF WORKFORCE SERVICES AND LOGAN INSURANCE AGENCY APPELLEES	APPEAL FROM THE ARKANSAS BOARD OF REVIEW [2012-BR-00659] AFFIRMED

DAVID M. GLOVER, JUDGE

Appellant Vernia Valentine appeals the denial of her claim for unemployment benefits. The Appeal Tribunal found that Valentine was dismissed for misconduct in connection with the work, and the Board of Review declined to hear Valentine's appeal, adopting the Appeal Tribunal's decision. She now appeals to this court, arguing that there is not substantial evidence to support the conclusion that she was discharged from her employment for misconduct. We affirm the denial of benefits.

Valentine was employed for over twenty years at Logan Insurance Agency. The agency had a policy that missed work was to be made up. Valentine left early one day to accompany her husband to a doctor's appointment; Ron Trusty, the owner and president of the agency, asked when she was going to make up the time; and she worked late to make up the lost time. However, the next day, Valentine went into Trusty's office and questioned

why she was required to make up the hour she had missed when another employee had not been required to make up missed hours. According to Trusty, he told her that everyone had to make up any hours missed or be docked pay; Valentine told him that he did not "have the guts" to run the business and stand up to another employee; he told her on three occasions that she needed to go back to work; she told him to "shut up"; and he then discharged her.

Valentine testified that the conversation was civil but led to a disagreement; that she believed that Trusty only wanted family working for him; that she believed that Trusty's sister-in-law, who also worked for Trusty, was the person who wanted her to make up the missed time; and that, while she did make up the time, she decided to confront Trusty the following morning. She stated that she told Trusty that his sister-in-law did not always make up her missed time; that it was his sister-in-law who wanted her to make up the time instead of Trusty; and that he did not have any backbone if he was going to let his sister-in-law run the business that he owned. Valentine denied telling Trusty that he did not have any guts or to shut up. She also cited other instances in which she believed that the sister-in-law did not make up missed time, but Valentine stated that if she took time, she always made it up. When questioned by Trusty whether she recalled being told by him on three occasions during the conversation to go back to work, Valentine answered that he did tell her to go back to work but that her question had not been answered.

A person will be disqualified for unemployment benefits if it is found that she was discharged from her employment on the basis of misconduct in connection with the work. Ark. Code Ann. § 11-10-514(a)(1) (Repl. 2002). In *Johnson v. Director*, 84 Ark. App. 349,

351–52, 141 S.W.3d 1, 2–3 (2004), this court set forth both the definition of "misconduct" as well as the well-settled standard of review in unemployment cases:

> "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. *Rossini v. Director*, 81 Ark. App. 286, 101 S.W.3d 266 (2003). 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. *Id.* Instead, there is an element of intent associated with a determination of misconduct. *Blackford v. Director*, 55 Ark. App. 418, 935 S.W.2d 311 (1996). 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. *Rossini v. Director*, *supra*. 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. *Blackford v. Director*, *supra*.
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> Whether an employee's actions constitute misconduct in connection with the work sufficient to deny unemployment benefits is a question of fact for the Board. *Thomas v. Director*, 55 Ark. App. 101, 931 S.W.2d 146 (1996). Our standard of review of the Board's findings of fact is well settled:
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> > We do not conduct a *de novo* review in appeals from the Board of Review. In appeals of unemployment compensation cases we instead review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board of Review's findings. 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 on the evidence before it. Substantial evidence is such evidence as a reasonable mind might accept as adequate to support a conclusion.
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> *Snyder v. Director*, 81 Ark. App. 262, 263, 101 S.W.3d 270, 271 (2003). Additionally, the credibility of witnesses and the weight to be accorded their testimony are matters to be resolved by the Board of Review. *Williams v. Director*, 79 Ark. App. 407, 88 S.W.2d 427 (2002).

On appeal, Valentine argues that "[o]ne single incident of . . . confronting her employer with regard to . . . issues of equity in the workplace, and pressing him for an answer to her inquiry . . . simply does not equate to or justify a denial of unemployment benefits based upon misconduct." She contends that even if this could be construed as an error in judgment to press her employer on this issue, it was not willful and that some deference should be given to the lengthy period of time she had worked for the agency. We disagree that it was not willful; furthermore, the period of time that Valentine worked for the agency is irrelevant with regard to whether she was fired for misconduct. Valentine herself admitted that she was told on three occasions to return to work by Trusty but did not leave because her question had not been answered. According to Trusty, she also told him to shut up and that he did not have the guts to run his own business. If believed, this was willful conduct, and it showed a disregard of the standard of behavior an employer has the right to expect from an employee. Given our standard of review, we hold that the Board could have reasonably reached its decision based on the evidence before it; therefore, there is substantial evidence to support the Board's decision.

Affirmed.

GLADWIN and GRUBER, JJ., agree.

Rush & Rush, by: *David L. Rush*, for appellant.

Phyllis Edwards, for appellee Artee Williams, Director of Department of Workforce Services.