

ARKANSAS COURT OF APPEALS

DIVISION IV

No. E12-238

MARTIN BOOKER

APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, AND
CATERPILLAR LOGISTICS
SERVICES

APPELLEE

Opinion Delivered: FEBRUARY 13, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2011-BR-00180]

AFFIRMED

RHONDA K. WOOD, Judge

The Arkansas Board of Review found that the appellant Martin Booker was discharged for misconduct in connection with his work and was thus disqualified for unemployment benefits. Appellant argues on appeal that the Board erred because there is no substantial evidence that he was discharged for misconduct. We affirm the denial of benefits.

On appeal, the findings of fact of the Board of Review are conclusive if they are supported by substantial evidence. Ark. Code Ann. § 11-10-529(c)(1) (Supp. 2011); *Perry v. Gaddy*, 48 Ark. App. 128, 891 S.W.2d 73 (1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *West v. Director*, 94 Ark. App. 381, 231 S.W.3d 96 (2006). 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 it could have reasonably reached its decision based upon the evidence before it. *Id.*

Arkansas Code Annotated section 11-10-514(a)(1) (Supp. 2011) provides that a person shall be disqualified from receiving unemployment benefits if the Director of the Department of Workforce Services finds that the person is discharged from his or her last work for misconduct in connection with the work. “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 that the employer has a right to expect of his employees, and (4) disregard of the employee’s duties and obligations to his employer. *Fulgham v. Director*, 52 Ark. App. 197, 918 S.W.2d 186 (1996). To constitute misconduct for unemployment-insurance purposes, however, more is required 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. *Johnson v. Director*, 84 Ark. App. 349, 141 S.W.3d 1 (2004). Instead, there is an element of intent associated with a determination of misconduct. *Id.* 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).

We think that the Board reasonably could find that appellant was guilty of such misconduct and that the Board’s decision was supported by substantial evidence. It is our duty to review the evidence in the light most favorable to the Board’s findings. *Southwestern Bell Telephone, L.P. v. Director*, 93 Ark. App. 303, 218 S.W.3d 317 (2005).

Martin Booker was hired as an assembler trainee with appellee Caterpillar on June 21, 2010. Rodney McDougal, Caterpillar's Human Resource manager, testified that on Booker's third day of employment with the company, he was informed of the certification requirements to become an assembler. One of the requirements for keeping the job was that Booker pass a written test. Booker did not pass the written exam after two attempts and was terminated on September 12, 2010.

McDougal testified that Booker had almost twelve weeks of training and two chances to take and pass the test before he was terminated, once with an open book and once after he was given all the answers to study. Booker was also told before his second attempt at the exam that if he missed more than twenty-four questions he would fail the test, as that would automatically cause him to score less than the 80% needed to pass. Booker left exactly twenty-four questions blank and turned in his test one and a half hours before it ended. Consequently, he failed the exam. This supports the Board's conclusion that Booker's actions were a willful and intentional disregard of the employer's best interests and therefore misconduct in connection with the work. We hold that substantial evidence supports the Board's finding and affirm the Board's denial of unemployment benefits.

Affirmed.

HIXSON and BROWN, JJ., agree.

Sheila F. Campbell, for appellant.

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