

ARKANSAS COURT OF APPEALS

DIVISION IV

No. E12-494

MARK S. KING, M.D., P.A.
APPELLANT

V.

DIRECTOR, DEPARTMENT OF
WORKFORCE SERVICES, and
BARBARA BRIDGES
APPELLEE

Opinion Delivered FEBRUARY 13, 2013

APPEAL FROM THE ARKANSAS
BOARD OF REVIEW
[NO. 2011-BR-01442]

AFFIRMED

KENNETH S. HIXSON, Judge

The appellee in this unemployment compensation case is Barbara Bridges, who worked as a nurse for appellant Mark S. King, M.D., until being discharged on March 7, 2011. The Department of Workforce Services initially found, pursuant to Ark. Code Ann. § 11-10-514(a)(1) (Repl. 2012), that Ms. Bridges was disqualified from receiving benefits because she was discharged for misconduct connected with the work. Ms. Bridges appealed, and the Appeal Tribunal reversed the determination of the Department, finding that Ms. Bridges was discharged for reasons other than misconduct connected with the work, and awarded benefits. The employer appealed to the Board of Review, and the Board affirmed the decision of the Appeal Tribunal. On appeal from the Board's decision to this court, Dr. King argues that Ms. Bridges should be disqualified from receiving benefits because her discharge was due to her misconduct at work. We disagree with appellant and affirm.

On appeal, the Board of Review's findings of fact are conclusive if they are supported by substantial evidence. *Trigg v. Director*, 72 Ark. App. 266, 34 S.W.3d 783 (2000). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Peterson v. Director*, 90 Ark. App. 19, 203 S.W.3d 655 (2005). 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.*

As an initial matter, we note that Dr. King asks us to apply the wrong standard of review. We do not determine, as Dr. King suggests, whether a contrary finding by the Board would have been supported by substantial evidence. Our review, instead, is limited to whether substantial evidence supports the findings that the Board did make. *See Trigg, supra.* Even when there is evidence upon which the Board might have reached a different decision, we will affirm if the Board could reasonably reach the decision it made. *Id.*

Jennifer Groce is the office manager at Dr. King's dermatology clinic. Ms. Groce testified that Ms. Bridges began working there on January 18, 2011. Ms. Groce stated that she discharged Ms. Bridges on March 7, 2011, due to repeated instances of disruption to the office because of Ms. Bridges' personal issues.

According to Ms. Groce, the first disruptive event occurred on February 18, 2011. Ms. Bridges subsequently advised Ms. Groce that she had previously lost her husband and a

child, and she indicated that the anniversary of her husband's death was difficult. Ms. Groce said that later that day Ms. Bridges again became upset due to personal problems and was unable to work.

On the morning of February 23, 2011, Ms. Bridges called Ms. Groce at home requesting to take the day off to take care of personal business and promising not to bring her issues to work again, and Ms. Groce gave her the day off.

On March 7, 2011, Ms. Bridges arrived for work tearful and emotional and asked to speak with Ms. Groce. After counseling, Ms. Bridges went back to the exam rooms, and shortly thereafter Dr. King contacted Ms. Groce stating that Ms. Bridges had left the area and gone outside. Ms. Groce noticed that Dr. King's office door was closed, so she went in and found Ms. Bridges in his office talking on her cell phone. Ms. Bridges was extremely distraught, and upon inquiry she said that her current husband had tried to break into her car. Ms. Groce testified that it was not acceptable for Ms. Bridges to go into Dr. King's office and talk on her cell phone.

After this encounter, Ms. Groce told Ms. Bridges to go home because she was unable to focus on her job. Ms. Bridges stated that she could leave and get a pill from her doctor and come back that afternoon, but Ms. Groce did not pursue that idea and advised that if she could pull herself together, Ms. Bridges could come back to work the next day.

After Ms. Bridges left, Ms. Groce talked with the other nurses, and they proceeded to tell her about Ms. Bridges' behavior while in the exam area. One of the nurses said that Ms. Bridges "actually got up in her face" and that she felt very threatened. The other nurse

stated that Ms. Bridges “looked totally out of sorts” and she questioned what was going on with Ms. Bridges as far as the behavior she was displaying.

Ms. Groce testified that after talking to the other two nurses, she decided that she could no longer employ Ms. Bridges “because of the constant disruptions due to all her personal issues and her lack of ability to work when she’s upset and to work with the other nurses as a team.”

Ms. Bridges testified on her own behalf and gave her account of the events. Ms. Bridges did not dispute her employer’s claim that she had become upset at work due to her personal problems. However, Ms. Bridges stated that, during the events of March 7, 2011, she went into Dr. King’s office only because Dr. King had told her to go there and wait for Ms. Groce. Ms. Bridges stated that she later became upset when she heard her car alarm sounding. According to Ms. Bridges, Ms. Groce counseled her in Dr. King’s office and told her to take the rest of the day off. Later that day, Ms. Groce discharged her over the phone.

The Board of Review found that Ms. Bridges was not disqualified from receiving unemployment benefits because she was discharged for reasons other than misconduct connected with the work. We discussed misconduct for purposes of unemployment cases in *A. Tenenbaum Co. v. Director*, 32 Ark. App. 43, 45, 796 S.W.2d 348, 350 (1990):

“Misconduct” involves: (1) disregard of the employer’s interests, (2) violation of the employer’s rules, (3) disregard of the standards of behavior which the employer has a right to expect of his employees, and (4) disregard of the employee’s duties and obligations to his employer. Moreover, there is an element of intent associated with a determination of misconduct. Mere inefficiency or poor performance does not, in itself, constitute misconduct: the Board must determine that there was an intentional or deliberate violation, a willful or wanton disregard, or carelessness or negligence of

such degree or recurrence as to manifest wrongful intent or evil design in order to find misconduct. (Citations omitted.)

In the present case the Board made the following findings in support of its decision:

In this case, the employer discharged the claimant while she was still in her probationary period after it determined that the claimant, an employee for only six weeks, did not work well with the other nurses already on the staff, apparently due to personal problems disrupting the claimant's life. The employer presented little specific information concerning how the claimant's behavior affected the workplace or what duties the claimant failed to perform. Thus, the employer did not establish by a preponderance of the evidence that the claimant's actions of being emotional on the anniversary of the death of her first husband and upset at the fact that someone attempted to break into her vehicle on the employer's parking lot were an intentional disregard of the employer's best interest.

Our review compels the conclusion that the Board could reasonably reach its decision upon the evidence before it, and therefore that its decision is supported by substantial evidence. The Board relied on evidence that, on the days Ms. Bridges became emotional at work, she was mourning the anniversary of her husband's death or responding to her car being broken into. In consideration of these personal issues, the Board could reasonably conclude that the conduct exhibited by Ms. Bridges, including her use of a cell phone under the circumstances, did not amount to an intentional disregard of her employer's best interest. While Dr. King takes issue with the Board's statement that the employer "presented little specific information concerning how the claimant's behavior affected the work place," we think this was a fair inference from the testimony presented. But more importantly, whether or not Ms. Bridges' behavior adversely affected the workplace, her behavior as found by the Board did not constitute misconduct connected with the work. On this record, we hold that the Board's finding on this critical issue was supported by substantial evidence.

Cite as 2013 Ark. App. 97

Affirmed.

WOOD and BROWN, JJ., agree.

Ethredge & Copeland, P.A., by: *Johnnie A. Copeland*, for appellant.

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