Cite as 2013 Ark. App. 355

ARKANSAS COURT OF APPEALS

DIVISION III
No. E-13-52

PATRICK BROWN APPELLANT	**Opinion Delivered** MAY 29, 2013
V.	APPEAL FROM THE ARKANSAS BOARD OF REVIEW [NO. 2012-BR-03529]
DIRECTOR, DEPARTMENT OF WORKFORCE SERVICES, and SANDALWOOD HEALTHCARE APPELLEES	REVERSED AND REMANDED

BILL H. WALMSLEY, Judge

Appellant Patrick Brown was discharged from his job as a CNA for Sandalwood Healthcare on September 20, 2012. Appellant was denied unemployment benefits on the basis of misconduct in connection with the work. He appealed to the Arkansas Appeal Tribunal, which held a hearing and affirmed that determination. The Board of Review entered an order denying his application for appeal to the Board; thus, the decision of the Appeal Tribunal was deemed to be a decision of the Board for purposes of judicial review. Appellant has now appealed to this court, and we find that there is insufficient evidence that he was discharged for misconduct. Thus, we reverse and remand.

In his statement to the Department of Workforce Services (DWS) and in his testimony before the Appeal Tribunal, appellant stated that he was called prior to his shift on September 20, 2012, and told that he was being terminated because of "too many complaints." He said that the employer did not provide any details about these complaints.

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Appellant did admit to being sent home from work after an incident on September 6, 2012. He explained that he had asked the charge nurse why there were so many people assigned to him, but she would not answer him. Instead, she talked over him every time he spoke. Appellant said that he asked that they take turns listening to each other, but the charge nurse yelled at him and ultimately told him to clock out. Appellant denied acting inappropriately. Although appellant indicated on the DWS form that this was the "final incident that caused the discharge," he maintained at the hearing that this was not part of his discharge because he was told only that he was fired for "too many complaints." No representative of the employer appeared at the hearing, and the record contains no information provided by the employer regarding the complaints, this incident, or appellant's discharge.

The Appeal Tribunal found that "it is more likely than not that the claimant was discharged for arguing with his supervisor." Thus, the Tribunal concluded that appellant intentionally disregarded the standards of behavior his employer had the right to expect of its employees.

On appeal, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings, and we will affirm the Board's decision if it is supported by substantial evidence. *Clark v. Dir., Emp't Sec. Dep't*, 83 Ark. App. 308, 126 S.W.3d 728 (2003). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.*

Arkansas Code Annotated section 11-10-514(a)(1) (Repl. 2012) provides that "an

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individual shall be disqualified for benefits if he or she is discharged from his or her last work for misconduct in connection with the work." The employer has the burden of proving misconduct by a preponderance of the evidence. *Maxfield v. Dir., Ark. Emp't Sec. Dep't*, 84 Ark. App. 48, 129 S.W.3d 298 (2003). Mere unsatisfactory conduct, ordinary negligence, or good-faith errors in judgment or discretion are not considered misconduct unless they are of such a degree or recurrence as to manifest wrongful intent, evil design, or an intentional disregard of the employer's interests. *Id*.

We hold that there is insufficient evidence to support the finding that appellant was discharged for misconduct. Although the Appeal Tribunal found that appellant argued with his supervisor, appellant's description of the incident—the only version in the record—indicates that he was attempting to address his concerns about the number of people assigned to him. Furthermore, appellant insisted that he was fired for complaints, not this incident. With no evidence of the nature of the complaints against appellant, we cannot know that his actions constituted misconduct and not mere negligence or good-faith errors in judgment. Thus, we hold that the employer has failed to meet its burden of proving misconduct by a preponderance of the evidence. As such, we reverse and remand this case for an award of benefits.

Reversed and remanded.

PITTMAN and WOOD, JJ., agree.

Patrick Brown, pro se appellant.

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