

IN THE COURT OF APPEALS OF IOWA

No. 6-318 / 05-1115

Filed July 26, 2006

ERIC J. BENKI,
Plaintiff-Appellant,

vs.

CITY OF DES MOINES,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,
Judge.

Eric Benki appeals from the termination of his civil service employment.

AFFIRMED.

Joseph L. Walsh and Nathaniel R. Boulton, Des Moines, for appellant.

Bruce E. Bergman, City Attorney, and Carol J. Moser, Assistant City
Attorney, Des Moines, for appellee.

Heard by Mahan, P.J., and Hecht, J., and Robinson, S.J.*

*Senor judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

Per Curiam

Eric Benki appeals from the termination of his civil service employment.

We affirm.

I. Background Facts and Proceedings.

Eric Benki was employed as a laborer for the City of Des Moines Public Works Department (City) from August 31, 1998, until he was terminated for misconduct on September 24, 2003. Benki's problems with his supervisor began in the fall of 2002, when Benki's application for a street-sweeper position was rejected.¹ In December of 2002, Benki's direct supervisor, Jerry Lydic, instructed Benki to remain in a city truck during a meeting Lydic was to have with senior management, but Benki refused. Later, in February of 2003, Benki yelled at Lydic over the phone concerning a pay dispute involving Benki's use of sick days. The next day Benki confronted Lydic in person with another pitched verbal exchange in front of several other employees.² The City cautioned Benki against any further verbal abuse directed at Lydic.

As a laborer, Benki was required to respond to predicted snow emergencies. In April of 2003, Benki failed to respond to a call from his supervisor directing Benki to report for work. Benki claimed he had watched the

¹ The street-sweeper position required certain driver's license certifications which Benki did not obtain. Benki appealed the City's decision not to promote him, maintaining that he had passed the necessary driving tests but had merely neglected to request the Department of Transportation to note the certification on his driver's license. After the Civil Service Commission rejected his appeal, Benki agreed to settle the matter when the City agreed to expunge it from his employment records.

² Benki used a sick day on February 5, but was later informed that he didn't have any paid time-off and would not be compensated. While Benki acknowledges that he yelled at his supervisor in front of his co-employees, he maintains that the City later acknowledged its mistake in calculating Benki's use of sick leave.

weather and had determined that no snow emergency was imminent, and therefore did not respond to the voicemail message directing him to report for work. As a result, Benki was disciplined for unresponsiveness to supervision.

On September 10, 2003, Benki developed a rash over virtually his whole body while using a high-pressure washer in the course of his employment. Benki claimed the rash caused him extreme discomfort. After reporting the injury to his supervisors, he was directed to the City's medical clinic at Des Moines University for examination of the rash. Benki arrived at the clinic at approximately 12:30 p.m., but without an appointment. Shortly before 2 p.m., Benki was taken to an examination room where he was eventually examined by Shelly Diehl, a physician's assistant. Following a brief physical examination,³ Diehl returned to the room a short time later and informed Benki that while the "dermatitis" on his feet was work-related, the "folliculitis" on his face was not. In her written notes, Diehl noted that upon being informed of her diagnosis, Benki became very upset and demanded a second opinion. Diehl found Benki's physical demeanor threatening, and she later testified that she was consequently uncomfortable being in the treatment room with Benki.

Diehl left the examination room and consulted with Jessica Sleeth, a registered nurse in charge of the clinic's operations. Sleeth, concerned about Benki's emotional reaction to his diagnosis, contacted the City's workers' compensation liason and received authorization to treat Benki's facial folliculitis whether or not it was work-related. Sleeth then entered the examination room and informed Benki of the City's willingness to treat the rash wherever it

³ Benki claims that Diehl did not perform a thorough examination of his rash, noting that she did not even look at the rash on his legs.

appeared on his body, but advised Benki that he would have to wait until Diehl was finished with another patient. Benki was unsatisfied with that arrangement, however, and he demanded immediate treatment because (1) his shift would soon be over at 3 p.m., (2) he did not wish to remain at the clinic when he was not being paid, and (3) his ride back to his vehicle would be leaving shortly. Sleeth testified that Benki was extremely confrontational during this exchange, noting that he was yelling at her loudly while only a few inches away from her face. Benki's verbal expression of his dissatisfaction with the treatment he had received continued as he departed the clinic.⁴

Clinic representatives later alerted Des Moines University Security and the City's Human Resource Department that Benki had been "hostile, verbally aggressive and demanding and threatening" during the incident. The clinic's staff, who had experience with unhappy patients in the past, believed that Benki's outbursts were so extraordinary that steps were taken to determine whether Benki could be barred from attending the clinic in the future.

Benki did not report to work the day following the incident at the clinic, and failed to follow the required call-in procedures for taking a sick day.⁵ This failure, along with his obstreperous behavior towards both his supervisor and the clinic's staff prompted Public Works Director, Bill Stowe, to schedule a pre-disciplinary meeting with Benki. Stowe claimed that Benki also became increasingly belligerent and difficult with him, and recommended that Benki's employment

⁴ Benki reputedly yelled as he was leaving the clinic, "this place is a joke," and referred to the clinic's staff as "assholes."

⁵ Benki did call another supervisor he occasionally worked under to give notice of his absence, but concedes he failed to inform Lydic before the shift began as required by a department rule.

with the City end for misconduct effective September 24, 2003. The City Manager agreed with Stowe's recommendation and notice of termination was given to Benki.

Benki appealed the termination in proceedings before the Civil Service Commission, contending the complained-of conduct did not constitute "misconduct" as defined by Iowa Code section 400.18 (2003). Following a hearing, the commission upheld his termination. Benki sought and obtained judicial review, but the district court upheld Benki's termination.

Benki now appeals, contending the City failed to prove misconduct sufficient to terminate his civil service employment.

II. Scope of Review.

We review the district court's decision to uphold Benki's determination de novo. Iowa Code § 400.27; *Dolan v. Civil Serv. Comm'n*, 634 N.W.2d 657, 662 (Iowa 2001). We give appropriate weight to the district court's findings but are not bound by them. *Id.* Our review is confined to the record made in the district court, and we limit our review to the issues raised in the district court. *Id.* In performing our review, we independently construe the factual record as a whole to determine if the civil servant's discipline was warranted. *Civil Service Comm'n of Coralville v. Johnson*, 653 N.W.2d 533, 537 (Iowa 2002).

III. Discussion.

Iowa Code section 400.18 states:

No person holding civil service rights as provided in this chapter shall be removed, demoted, or suspended arbitrarily, except as otherwise provided in this chapter, but may be removed, demoted, or suspended after a hearing by majority vote of the civil service commission, for neglect of duty, disobedience, misconduct, or failure to properly perform the person's duties.

Our supreme court has recognized that the term “misconduct” as used in section 400.18 has no statutorily fixed meaning, and should be broadly interpreted to include both “relatively minor or innocuous behavior . . . or more flagrant and injurious breaches of decorum.” *Johnson*, 653 N.W.2d at 537; *Sieg v. Civil Serv. Comm’n*, 342 N.W.2d 824, 829 (Iowa 1983). We may consider all conduct in determining whether the cumulative effect of a civil servant’s misconduct is sufficient to warrant discharge. See *McCormack v. Civil Serv. Comm’n*, 315 N.W.2d 855, 859 (Iowa Ct. App. 1981).

Viewing misconduct broadly as instructed, we cannot agree with Benki’s assertion that he was arbitrarily discharged. With regard to the incident at the medical clinic, we note that (1) the City’s relationship with the clinic was of relatively recent vintage and (2) the City had a legitimate interest in maintaining a healthy working relationship with its medical provider. To the extent that the conduct resulting in Benki’s discharge is required to bear some relationship to his official duties or employment, we believe Benki’s status as a civil servant while receiving medical care at the clinic suffices. See *Millsap v. Cedar Rapids Civil Serv. Comm’n*, 249 N.W.2d 679, 686 (Iowa 1977) (requiring that misconduct justifying police officer’s discharge be “conduct detrimental to the public interest”). While we acknowledge that Benki had a personal interest in obtaining appropriate medical treatment, he did in fact seek treatment from the clinic as an employee of the City. We believe Benki’s status as a civil servant required him to conduct himself with appropriate decorum while in a public place during work hours while being paid, and we believe Benki’s public tirade at the clinic shattered this expectation.

As the district court noted, the outburst at the clinic was not an isolated instance of a person upset with his medical treatment. It was instead the culmination of a pattern of obstreperous behavior which Benki usually reserved for his direct supervisor, Jerry Lydic. A healthy work environment is possible only if supervisors and subordinates treat each other with civility. Even if the bases upon which Benki framed his work-related complaints were in fact legitimate, his decision to launch public invective against his supervisor is not protected under chapter 400.

After de novo review, we believe the district court correctly found Benki committed sufficient misconduct, when viewed as a whole, to support his termination. See *McCormack*, 315 N.W.2d at 859. As the district court aptly noted:

An employer cannot reasonably be expected to retain an employee who engages in a pattern of behavior that demonstrates he has no respect for legitimate authority at work . . . who consistently creates a negative, confrontational atmosphere at work . . . [and] who misbehaves so badly at a medical clinic that the clinic will refuse to treat the employee, if it can do so legally.

Concluding the City's disciplinary action was not arbitrary, we affirm his discharge from the Des Moines Public Works Department.

AFFIRMED.

Mahan, P.J. and Robinson, S.J., concur. Hecht, J., dissents.

Hecht, J. (dissenting)

I respectfully dissent. While I acknowledge our supreme court's broad interpretation of the term "misconduct" used in section 400.18, I cannot agree that Benki's conduct, even when viewed cumulatively, warranted his discharge. Rules of statutory construction require that we view the entire statute as a whole, including the overarching purposes to which the statute is applied. See e.g., *State v. Young*, 686 N.W.2d 182, 184-85 (Iowa 2004) (noting that we begin our analysis with the entire statute in mind); *Bevel v. Civil Service Com'n of City of Des Moines*, 426 N.W.2d 380, 382 (Iowa 1988) (noting that it is the duty of the courts to construe the statutes liberally with a view to promote their objects and assist the parties in obtaining justice). "As applied to sanction or removal of employees, the primary purpose of [chapter 400] is to protect employees from arbitrary sanctions or discharge by their superiors or elected officials." *Bevel*, 426 N.W.2d at 382.

My analysis begins with the observation that the legislature made the policy choice to grant public employees certain protections against termination. Unlike at-will employees who may be terminated for any reason consistent with public policy or for no reason, *French v. Foods, Inc.*, 495 N.W.2d 768, 769 (Iowa 1993), public employees are only dischargeable for legislatively-prescribed causes. See Iowa Code § 400.18. In this case, the City relies only upon misconduct as the cause for Benki's termination. In support of its position, the City notes our supreme court's observation that "misconduct" in this context has no statutorily fixed meaning, and may be broadly interpreted to include "relatively minor or innocuous behavior." *Johnson*, 653 N.W.2d at 537; *Sieg*, 342 N.W.2d at

829. I would narrowly interpret that pronouncement, however, because I do not believe the court intended its language to nullify the legislature's policy choice to place real limits on public employers' authority to terminate their employees. For if by judicial fiat we qualify "misconduct" with the adjective "innocuous," we effectively nullify the protections intended by the legislature for public employees and obliterate a distinction that separates them from at-will employees. Judicial restraint should motivate us to avoid such a result. After a de novo review of the record, I do not believe Benki's conduct rises to the level of misconduct.

The City posits that Benki's verbal tirades against his supervisor demonstrated a refusal to respect the hierarchical nature of employment. While it must be conceded that Benki did not approach the February 2003 controversy with the equanimity many prefer in civil discourse, I note that the subject of his frustration was an apparently meritorious grievance about his accumulated sick leave entitlement. It is in my view important to note in our appraisal of the propriety of Benki's comportment that the City eventually conceded Benki's claim was at least in part meritorious. Surely the statutory protections afforded civil servants extend to the right to zealously advance meritorious compensation claims against public employers. And although Benki became frustrated and angry as he voiced his grievance, and apparently failed to extend the courtesies one might prefer in such circumstances, an objective assessment of his conduct does not in my view rise to the level of misconduct for which termination is authorized under section 400.18. There is no indication that Benki engaged in physical violence or threatened violence when he refused to accept his supervisor's position on a matter affecting compensation. I find significant the

absence of evidence that the City ever directed Benki to obtain treatment for an anger problem if indeed his supervisors believed such a problem existed before the decision to terminate was made. Although I certainly do not suggest that a public employer must, as a matter of law, demand such treatment before termination, the failure to do so under the circumstances of this case influences my objective assessment of the merits of the City's claim of misconduct.

Nor am I persuaded that Benki's behavior at the Des Moines University Occupational Clinic rose to the level of misconduct for which termination was justified. At the outset, I find unconvincing the City's assertion that Benki represented the City when he went to the clinic for treatment. Although he was an employee of the City and went to the clinic during his normal work hours because he was directed to do so, Benki certainly did not go there as an agent of the City. If there was a relationship between the visit to the clinic and Benki's employment, it was tangential at best.

As in the case involving the controversy over his entitlement to sick pay, Benki's dissatisfaction with the service he received at the clinic was not, in my view, without a factual basis. It seems plausible that a reasonable person might view with some skepticism the provider's⁶ opinion that the rash on Benki's feet, legs, and torso was work-related, but the rash on his face was not. Such skepticism could have been exacerbated by the fact that the provider from a clinic chosen by the employer formed and expressed her opinion on causation without even conducting a cursory examination of the rash on Benki's legs. And after he verbalized his dissatisfaction with the provider's opinion on causation

⁶ The provider was not a physician.

and insisted that he be allowed to speak to the provider's supervisor,⁷ he was left alone in the exam room for more than an hour awaiting treatment that never was administered before he had to leave.⁸ It was not patently unreasonable for Benki, who claims he was quite uncomfortable from the rash that covered most of his body, to expect reasonably prompt and competent medical care from the employer's authorized provider. Although a reasonable person might disapprove of Benki's frank expression of contempt for the quality and timeliness of the attention he received, I would not characterize his behavior at the clinic as misconduct sufficient to justify his termination. Indeed, if chapter 400 is to provide even a modicum of protection for civil servants, I believe it must be interpreted to allow for the occasional expression of natural human emotions including frustration and anger.⁹ Although such expressions may, if they are so numerous or extraordinary as to interfere with job performance, constitute misconduct justifying termination, I do not believe Benki's did in this case. Consistent with my understanding of the purposes of chapter 400, I would hold that Benki's conduct at the clinic was not so unreasonable or extraordinary under the circumstances as to constitute misconduct.

I do not overlook Benki's failure to report for work during the snow emergency in April of 2003 in my assessment of the sufficiency of the City's evidence of misconduct. However, even Benki's supervisor testified that this

⁷ The supervisor was a registered nurse.

⁸ Benki chose to leave the clinic before the treatment was administered because the person who provided his transportation had to leave.

⁹ This is especially appropriate when circumstances might be expected to provoke emotional responses by a reasonable person.

single instance of dereliction of a work-related duty did not constitute misconduct that would justify termination. I would therefore reverse.