

IN THE COURT OF APPEALS OF IOWA

No. 6-442 / 05-2047
Filed October 11, 2006

ROSE M. MOORE,
Petitioner-Appellee,

vs.

**EMPLOYMENT APPEAL BOARD and
MY TYPE, INC.,**
Respondents-Appellants.

Appeal from the Iowa District Court for Scott County, Bobbie M. Alpers,
Judge.

The Employment Appeal Board and My Type, Inc. appeal a district court
ruling reversing the Board's denial of unemployment insurance benefits to Rose
M. Moore. **AFFIRMED.**

Anita Garrison, Employment Appeal Board, Des Moines, for appellants.

Linda Brundies, HELP Legal Assistance, Davenport, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

MILLER, J.

The Employment Appeal Board (the Board) and My Type, Inc. appeal a district court ruling reversing the Board's denial of unemployment insurance benefits to Rose M. Moore. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

Rose M. Moore applied for employment with My Type, Inc. (My Type) in June 2004 as a full-time courier/driver. She was asked to complete an employment application form and was informed a background check would be completed. One question on the application asked, "Have you been convicted of a felony or misdemeanor in the past ten years? Yes or no. If yes, describe in full." Moore circled "no." My Type hired Moore and she began working on June 27, 2004. My Type conducted a background check of Moore on November 15, 2004. In the background check My Type found Moore had pled guilty to the offense of going armed with intent in November of 2002. Moore received a deferred judgment on the charge, was placed on probation for two years, and was ordered to make restitution. The two-year term of probation was extended an additional year in order to allow Moore to fully satisfy the financial obligations she owed pursuant to the deferred judgment. Moore followed the terms of her probation, performed her community service, and as of November 2004 when My Type conducted the background check her only remaining obligation was to pay the remaining \$230 of a probation supervision fee.

Upon My Type discovering the deferred judgment, two My Type employees spoke with Moore and accused her of falsifying her employment application by answering "no" to the above quoted question. Moore told them

that although she had been charged with and pled guilty to the offense of going armed with intent it was her understanding that because she received a deferred judgment she had not been convicted of the crime and the record of the charge would be expunged as soon as she was able to pay the remaining \$230. She also stated she had relied on the advice of her probation officer who had told her the deferred judgment did not constitute a conviction.

Moore initially was “terminated” without pay on or about November 16, 2004. However, My Type gave her thirty days to pay the outstanding portion of her financial obligation and get her record expunged. If she did so she could then return to work. Moore was unable to do so without her income from My Type. Thus, after the thirty days had passed Moore was “officially terminated” from My Type on or about December 17, 2004, for falsifying her application.

Upon her discharge from My Type, Moore filed a claim for unemployment insurance benefits. My Type protested the claim and argued Moore was disqualified from receipt of unemployment benefits because she was discharged for misconduct. On December 9, 2004, an Iowa Work Force Development representative determined Moore was not eligible to receive benefits because “our records indicate you were discharged from work on 11/17/04 for falsifying your application for hire. This is considered to be misconduct since it could endanger the health, safety or morals of you or others.”

Moore appealed the representative’s determination and a hearing was held before an administrative law judge (ALJ). The ALJ upheld the December 9, 2004 decision, finding Moore had lied on her application when she answered “no” to the question about whether she had been convicted of a felony or

misdemeanor in the past ten years and concluding her answer constituted job-related misconduct disqualifying her from receiving unemployment insurance benefits.

Moore appealed the ALJ's decision to the Board and it affirmed the decision, finding it to be correct and adopting the ALJ's findings of fact and conclusions of law as its own. Moore then filed a petition for judicial review of the Board's denial of benefits. Moore first argued the agency made an error of law in concluding a deferred judgment is a conviction under Iowa law. She contended that because a deferred judgment in fact is not considered a conviction she did not lie when she stated she had not been *convicted* of a felony or misdemeanor. She further argued the record does not contain substantial evidence to support the agency's finding that she willfully and deliberately intended to submit false information to her employer.

The district court reversed the Board's denial of unemployment benefits to Moore. The court concluded, in part, that Moore's deferred judgment was not a conviction under Iowa law and thus the Board erred as a matter of law in finding Moore had lied when she stated she had not been convicted in the last ten years. It further concluded there was not substantial evidence in the record to support a finding that Moore willfully or deliberately provided her employer with false information and thus committed misconduct as defined by applicable law.

The Board appeals the district court's reversal of its denial of benefits, contending its decision to deny benefits was not affected by error of law and there was substantial evidence in the record to support its decision.

II. SCOPE AND STANDARDS OF REVIEW.

Iowa Code chapter 17A (2005) governs judicial review of agency action. When the district court exercises its judicial review power it acts in an appellate capacity to correct errors of law on the part of the agency. *Grundmeyer v. Weyerhaeuser Co*, 649 N.W.2d 744, 748 (Iowa 2002). Our review of the district court's decision requires application of the standards of Iowa Code section 17A.19(10) to determine whether our conclusions are the same as those of the district court. *P.D.S.I. v. Peterson*, 685 N.W.2d 627, 632 (Iowa 2004). If they are the same, we affirm; if not, we reverse. *Id.* A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a). This can be shown in a number of ways, including proof the action was ultra vires; legally erroneous; unsupported by substantial evidence in the record when that record is viewed as a whole; or otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. See *id.* § 17A.19(10).

III. MERITS.

Iowa Code section 96.5(2) (2003) provides a claimant is disqualified for unemployment benefits “[i]f the department finds that the individual has been discharged for misconduct in connection with the individual's employment.” The Iowa Administrative Code defines misconduct as

a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to

manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Iowa Admin. Code r. 871-24.32(1)(a). "Our supreme court has repeatedly held this definition accurately reflects the intent of the legislature." *Sellers v. Employment Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct. App. 1995).

The administrative code further provides:

When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Iowa Admin. Code r. 871-24.32(6). "Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Sellers*, 531 N.W.2d at 646 (*citing Breithaupt v. Employment Appeal Bd.*, 453 N.W.2d 532, 535 (Iowa Ct. App. 1990)). "An employer has the burden of proving a claimant is disqualified for benefits because of misconduct." *Id.*; (*citing Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989)).

We agree with the district court that there is not substantial evidence in the record showing Moore willfully and deliberately made a false statement on her application. Moore denied lying and asserted she had an honest belief she had not been convicted of a felony or misdemeanor because she had been granted a deferred judgment. Her belief was based largely on advice given to her by her

probation officer, and is supported by his testimony and his November 17, 2004 letter that was admitted into evidence. Far from offering evidence to contest Moore's assertions of honesty, it appears the representatives of her employer also believed she had not willfully and deliberately deceived them. The "Employer Statement" section of the "Factfinding Worksheet for Misconduct" prepared by Workforce Development reports the employer's belief that Moore "honestly believed she had answered the question truthfully," and reports this is the reason why My Type was willing to give Moore an additional thirty days to show that she had completed any remaining requirements to have any record of the charge expunged.

We conclude the district court was correct in finding there is not substantial evidence in the record demonstrating Moore willfully or deliberately provided false information on her application and thus committed such misconduct as would disqualify her from receiving unemployment insurance benefits. Misconduct sufficient to warrant disqualification is "limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees." Iowa Admin. Code r. 871-24.32(1)(a). It is clear from the record before us that even if Moore arguably provided false information on her application it was not done with such willful or wanton disregard, but instead was the result of an inadvertent and honest mistake based on the best information she had available to her at the time.

Because we have agreed with the district court that Moore did not willfully or deliberately provide her employer with false information and thus did not

commit misconduct as defined by applicable law, we need not determine whether the court was also correct in concluding the agency erred as a matter of law because a deferred judgment is not a conviction under Iowa law.

IV. CONCLUSION.

We conclude the court was correct in reversing the Board's decision to deny Moore unemployment insurance benefits, and concluding that Moore is eligible for such benefits as the result of her discharge from My Type.

AFFIRMED.

Sackett, C.J., dissents.

SACKETT, C.J. (dissents)

I would reverse the district court and affirm the Board.