

**IN THE COURT OF APPEALS OF IOWA**

No. 7-409 / 06-1621  
Filed July 12, 2007

**DR. ADEL AL-JURF,**  
Petitioner-Appellant,

**vs.**

**BOARD OF REGENTS, STATE OF IOWA,**  
Respondent-Appellee,

**UNIVERSITY OF IOWA,**  
Interested Party.

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Appeal from the Iowa District Court for Polk County, Robert A. Hutchinson,  
Judge.

Dr. Adel Al-Jurf appeals from the ruling on judicial review which affirmed  
his termination from employment at the University of Iowa Hospitals and Clinics.

**AFFIRMED.**

Becky Knutson of Davis, Brown, Koehn, Shors & Roberts, Des Moines, for  
appellant.

Thomas J. Miller, Attorney General and George Carroll, Assistant Attorney  
General, Des Moines, for appellee.

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

**VOGEL, J.**

Dr. Adel Al-Jurf appeals from the ruling on judicial review which affirmed his termination from employment at the University of Iowa Hospitals and Clinics (UIHC). We affirm.

**Background Proceedings.**

Dr. Al-Jurf is a general surgeon, who began working at the UIHC in 1977 and subsequently gained tenure, at one time being the top earner for his department. After a series of disturbing incidents, Dr. Carol Scott-Connor, chair of the department of surgery, made a disciplinary complaint to the UIHC Credentials Committee (Surgical Panel) regarding Dr. Al-Jurf's behaviors and she later filed a complaint with the University of Iowa Office of Affirmative Action. Findings were made on May 2, 2003, which served as the basis for Provost Jon Whitmore's resulting ethics complaint, alleging Dr. Al-Jurf had violated the University's Professional Ethics and Academic Responsibility Policy.

After a mediator was appointed but failed to reach a settlement, a faculty judicial commission was appointed to hear the complaint. The faculty commission held a hearing in April 2004, receiving testimony from thirteen witnesses and reviewing, "hundreds if not thousands of pages" of documents. On July 14, 2004, the commission submitted a report finding that Al-Jurf had not committed sexual harassment, violence, or retaliation; however, it did find that he was in violation of the University's standards of behavior by, among other things, vilifying, distressing, and interfering with the work of his colleagues, as well as creating a hostile educational environment for the student residents, impeding learning, and ultimately compromising patient care. The commission

recommended that Al-Jurf be terminated from his position in the department of surgery.

Dr. Al-Jurf appealed this matter to the Office of the President. Based on the record made at the previous hearing, President David Skorton, in a detailed opinion, accepted the commission's findings as well as its recommendation to terminate Al-Jurf. On further appeal to the Board of Regents, Al-Jurf's termination was summarily affirmed and a petition for judicial review was then filed by Dr. Al-Jurf. The district court affirmed the decision of the Board. It concluded that the findings of fact contained in the record were supported by substantial evidence, contained no errors of law, and that the decision was neither irrational, arbitrary, nor capricious. Dr. Al-Jurf appeals from this ruling.

#### **Scope of Review.**

Our review is governed by the Administrative Procedure Act. Iowa Code ch. 17A (2005); *Acuity Ins. v. Foreman*, 684 N.W.2d 212, 216 (Iowa 2004). We review the district court's decision by applying the standards of section 17A.19 to the agency action to determine if our conclusions are the same as those reached by the district court. *University of Iowa Hosps. & Clinics v. Waters*, 674 N.W.2d 92, 95 (Iowa 2004). 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).

**Analysis.**

The faculty commission, and later the University president, found Dr. Al-Jurf had violated two provisions of the University's Professional Ethics and Academic Policy. The first, section 15.4, generally obligates the employee to "show[] due respect for the rights of others to their opinions, . . . refrain[] from personal vilification, and acknowledge[] contributions of others to his or her work." The second provision that the commission found Al-Jurf to have violated, section 15.2, recognizes the faculty member's responsibility for creating a classroom or laboratory climate that is conducive to learning. It further obliges the faculty member to "conduct himself or herself at all times so as to demonstrate respect for the student." According to its Operations Manual, the University bore the burden of proving the allegations pertinent to these provisions by clear and convincing evidence in the record as a whole.

In the portion of his decision concluding Dr. Al-Jurf had violated section 15.4 repeatedly, the president noted incidents with and treatment of Dr. Beth Ballinger, nurse-anesthetist Lynn Fitzpatrick, and nurse Michelle Hostetler. As the bases for finding he had violated section 15.2, the president noted various problems with residents in 2001 that resulted in a petition against Dr. Al-Jurf and an incident with Dr. Yi-Horng Lee. On appeal, Dr. Al-Jurf argues that the "decision of the President, on the noticed charges, was not supported by substantial evidence in the record as a whole."<sup>1</sup>

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<sup>1</sup> While Dr. Al-Jurf frames his argument in several different ways, he essentially rests his appeal on the lack of substantial evidence to support his termination.

“The [agency's] factual findings are binding on this court if supported by substantial evidence.” *United Fire & Cas. Co. v. St. Paul Fire & Marine Ins. Co.*, 677 N.W.2d 755, 759 (Iowa 2004). Evidence is substantial if a reasonable person would find it adequate to reach a conclusion. *Simonson v. Snap-On Tools Corp.*, 588 N.W.2d 430, 434 (Iowa 1999). Our inquiry is whether the evidence supports the findings made by the agency, not whether the evidence may support a different finding. *Munson v. Iowa Dep’t of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994) (citing *Reed v. Iowa Dep’t of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991)). An appellate court should not consider evidence insubstantial merely because the court may draw different conclusions from the record. *Fischer v. City of Sioux City*, 695 N.W.2d 31, 33-34 (Iowa 2005).

Making a determination as to whether the evidence supporting one position is qualitatively weaker than another piece of evidence is not an assessment for the district court or the court of appeals to make when it conducts a substantial evidence review of an agency decision. *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394 (Iowa 2007). “It is the [agency’s] duty as the trier of fact to determine the credibility of the witnesses, weigh the evidence, and decide the facts in issue.” *Id.* at 394-95.

Upon our review of the record, we conclude, as did the district court, substantial evidence supports the decision now on appeal. Without repeating the specifics of each incident and charge, all of which have been the subject of multiple layers of review, including a thorough twenty-seven page ruling by the district court, each illustrates the hostile, unprofessional, and intimidating nature of Dr. Al-Jurf’s interactions with colleagues or students. The incidents evince a

lack of respect toward those associates, constitute “vilification,” and fostered an unacceptable workplace environment. As such, the University proved by clear and convincing evidence that Dr. Al-Jurf violated section 15.4 (“Responsibilities to Colleagues”) of the Professional Ethics and Academic Responsibility policy set forth in the University Operations Manual (UOM).

In addition, we find the incident with Dr. Lee fully supports the finding that Dr. Al-Jurf violated section 15.2 of the UOM, which cautions faculty members to conduct themselves “so as to demonstrate respect for the student” and to create a climate “that encourages the student’s endeavors to learn.” The 2001 petition from Dr. Al-Jurf’s residents exposed his belittling, derogatory, and insulting behavior toward them. The incident with Dr. Lee involved apparent threats and intimidation. The record as a whole supports the findings, as well as President Skorton’s concerns, that Dr. Al-Jurf’s conduct “threatened the vitality and health of this particular health care and learning community.”

**Conclusion.**

Whether specifically addressed or not, we have considered each of Dr. Al-Jurf’s contentions and find them to be without merit. The decision to terminate his employment is supported by substantial evidence in the record when viewed as a whole. We therefore affirm.

**AFFIRMED.**