IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

March 21, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

MARLENA RUSSELL	)	HAMILTON COUNTY
	)	03A01-9608-CH-00261
Plaintiff-Appellant	)	
	)	
	)	
v.	)	HON. HOWELL N. PEOPLES,
	)	CHANCELLOR
	)	
MARGARET CULPEPPER, Commissioner Of The Tennessee Department of Employment Security, Duly Appointed Successor of James A. Davenport, and CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY (Erlanger)	)	
	)	
Defendants-Appellees	)	AFFIRMED AND REMANDED

HARRY BERKE OF CHATTANOOGA FOR APPELLANT

CHARLES W. BURSON, Attorney General and Reporter; KIMBERLY M. FRAYN, State of Missouri Bar No. 41766; and JENNIFER H. HANN, Deputy Attorney General, OF NASHVILLE FOR MARGARET CULPEPPER

CARLOS C. SMITH and J. ROBIN ROGERS OF CHATTANOOGA FOR CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY

OPINION

Goddard, P.J.

Appellant, Marlena Russell, applied to the Tennessee Department of Employment Security for unemployment compensation

benefits. The Board of Review denied the Appellant's claim upon a finding that her discharge was for misconduct connected with her work within the meaning of T.C.A. 50-7-303(a)(2). The Hamilton County Chancery Court affirmed the decision of the Board of Review after determining that substantial and material evidence supported the Board's finding of misconduct connected with her employment.

The Appellant appeals insisting that under the circumstances her conduct did not amount to misconduct.

The Appellant was employed by the Alton Park Health Clinic of Erlanger Medical Center until May, 26, 1993. She worked at the clinic as a patient financial services manager. One of her responsibilities was to pick up the clinic's bank bags every day from the local bank to ensure that a daily bank deposit of cash receipts could be made.

On May 25, 1993, Derrick Jones, the Appellant's immediate supervisor, instructed the Appellant on at least two separate occasions to go to the bank and pick up the bank bags.[1] Mr. Jones testified that the bank bags serve as a means to take out daily cash from the clinic and that leaving this cash at the clinic overnight causes problems with theft and accounting. The Appellant does not dispute this. The Appellant refused to pick

[1] Although the Appellant disputes that Mr. Jones made three separate requests for her to pick up the bank bags, she admits that Mr. Jones told her to pick up the bags on at least two occasions.

up the bank bags until the following morning. The Appellant gives justifications for her inactions, but she does admit to refusing to pick up the bank bags.[2] The bank bags were not picked up until the following day and the Appellant was terminated for insubordination.

T.C.A. 50-7-304(i)(2) provides the standard of review for a final decision by the Board of Review:

> The chancellor may affirm the decision of the board or the chancellor may reverse, remand or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:
> (A) In violation of constitutional or statutory provisions;
> (B) In excess of the statutory authority of the agency;
> (C) Made upon unlawful procedures;
> (D) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
> (E) Unsupported by evidence which is both substantial and material in light of the entire record.

No arguments have been made by the Appellant regarding constitutional violations, the agency's statutory authority, unlawful procedure or an abuse of discretion. Therefore, review is limited to determining whether or not substantial and material evidence exists to support the decision. T.C.A. 50-7-304(i)(3) explains the chancellor's role in determining whether substantial and material evidence exists to support a decision:

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[2] The Appellant testified before the Board of Review that she said to her supervisor, "Look Derrick, I can't argue with you, I will pick them up in the morning."

> In determining the substantiality of the evidence, the chancellor shall take into account whatever in the record fairly detracts from its weight, but the chancellor shall not substitute the chancellor's judgment for that of the board of review as to the weight of the evidence on questions of fact. No decision of the board shall be reversed, remanded or modified by the chancellor unless for errors which affect the merits of the final decision of the board.

If there is substantial and material evidence to support the decision of the Board of Review, the Board's decision is conclusive, and the trial court's review shall be confined to questions of law. Perryman v. Bible, 653 S.W.2d 424, 429 (Tenn. App. 1983). This Court must apply the same standard as the trial court in reviewing the trial court's decision in an unemployment compensation case. Armstrong v. Neel, 725 S.W.2d 953, 955 (Tenn. App. 1986).

Our courts have defined "substantial evidence" as evidence which "a reasonable mind might accept to support a rational conclusion and which furnishes a reasonably sound basis for the action being reviewed." Armstrong at 955, note 2 (citing Southern Railway Co. v. State Board of Equalization, 682 S.W.2d 196, 199 (Tenn. 1984)). We should not disturb a reasonable decision of any agency which has expertise, experience and knowledge in a particular field. Armstrong at 955.

The Appellant contends that she was not guilty of work-related misconduct because she was working with a patient at the time and reasonably placed the patient's needs above picking up

the bank bags. She also argues that she had to stay in the clinic because it was understaffed that day. This Court should not weigh this evidence in deciding whether the Appellant was justified in refusing to follow the express orders of her supervisor nor should we substitute our judgement for that of the Board of Review as to the weight of the evidence on questions of fact such as this. From a consideration of the record before this Court, we are of the opinion that the findings of fact made by the Board of Review and considered by the Chancellor contain substantial and material evidence to support a finding that the Appellant was not justified in refusing to follow her supervisor's orders.

After acknowledging that there is substantial and material evidence to support the finding that the Appellant was not justified in refusing to follow her supervisors orders, we next must determine whether refusing to follow the reasonable orders of a supervisor amounts to "misconduct connected with such claimant's work," so as to disqualify her from receiving unemployment benefits, as set forth in T.C.A. 50-7-303(a)(2). Our courts have held that the unemployment statutes were enacted for the benefit of unemployed workers and that they should be

construed liberally in favor of the employee. Disqualification provisions should be construed narrowly. Weaver v. Wallace, 565 S.W.2d 867, 869-70 (Tenn. 1978). The employer has the burden of proving that an employee should be disqualified from receiving unemployment benefits. Weaver at 870.

T.C.A. 50-7-303(a)(2) does not define the types of misconduct that warrants the denial of unemployment compensation, and therefore, the courts must make this determination on a case by case basis. Cherry v. Suburban Mfg. Co., 745 S.W.2d 273, 275 (Tenn. 1988). In Armstrong, the Court adopted the misconduct standard found in Boynton Cab. Co. v. Neubeck, 296 N.W. 636, 640 (Wis. 1941), which established that misconduct connected with an employees employment was limited to:

> conduct evincing such wilful and wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or 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, inadvertences 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.[3]

The classic example of "a deliberate violation" or "disregard of standards of behavior which the employer has the right to expect of his employee" is an employee's refusal to perform a task which a supervisor requests of that employee. We hold that an employee's refusal to follow the lawful requests of a supervisor is misconduct connected with such claimant's work within the meaning of T.C.A. 50-7-303(a)(2). See also Boyd v. Bible, an unreported opinion of this Court, filed in Nashville on February 1, 1984("[W]here an employee has engaged in dishonest conduct or has intentionally refused to carry out his employer's orders, the legislature has rationally determined that exclusion from this government protection[4] is warranted."); Hinson v. Kelley, an unreported opinion of this Court, filed in Nashville on July 22, 1987 ("[D]isobedienece of the lawful orders of a superior can scarcely be doubted, and we do not doubt that such

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[3] In Simmons v. Culpepper, an unreported opinion of this Court, filed in Nashville on August 30, 1996, Judge Lewis explained as follows:

> In Armstrong, the court noted that the appropriateness of the Boynton definition to Tennessee cases had been questioned because Tennessee's statutes differentiated between gross and simple misconduct. Armstrong 725 S.W.2d at 956. Nevertheless, the court determined that it could continue to use the Boynton standards for simple misconduct cases. Id. In 1987, the General Assembly amended Tennessee Code Annotated section 50-7-303(a)(2) and eliminated the distinction between simple and gross misconduct. 1987 Tenn. Pub. Acts Ch. 368. Thus, we are of the opinion that the Boynton standard is still appropriate under the unemployment compensation statutes as they exist today.

We agree that the Boynton standard is the appropriate standard for misconduct cases.

[4] The Court was referring to unemployment benefits.

deliberate, perhaps arrogant, disobedience is 'misconduct connected with his work.'").

For the foregoing reasons the judgment of the Trial Court is affirmed and the cause remanded for collection of costs below. Costs of the appeal are adjudged against the Appellant.

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Houston M. Goddard, P.J.

CONCUR:

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Charles D. Susano, Jr., J.

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Clifford E. Sanders, Sp.J.