IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

JENNIFER TURNER

Petitioner,

v.

BILLY S. STOKES, Commissioner of the Tennessee Department of Employment Security, and WEST TENNESSEE BEHAVIORAL CENTER,

Respondents.

Gibson Chancery No. H-3395
C.A. No. 02A01-9510-CH-00238

Hon. George R. Ellis, Chancellor

KRISTI R. REZABEK, Law Offices of Kristi R. Rezabek, Jackson, Attorney for Petitioner.

CHARLES W. BURSON, Attorney General & Reporter, ROBERT W. STACK and JAMES H. TUCKER, JR., Assistant Attorney General, Nashville, Attorneys for Respondent Billy Stokes and DALE CONDER, JR., Rainey, Kizer, Butler, Reviere & Bell, Jackson, Attorney for Respondent West Tennessee Behavioral Center.

AFFIRMED

Opinion filed:

TOMLIN, Sr. J.

Petitioner, Jennifer Turner, filed a petition for certiorari in the Gibson County Chancery Court asking that court to review a decision of the Board of Review of the Tennessee Department of Employment Security ("TDES"), affirming that agency's denial of petitioner's application for unemployment benefits on the grounds that she was discharged for work-related misconduct. The chancellor affirmed the Board. On appeal petitioner presented two issues for our consideration: (1) whether there is substantial and material evidence in the record to support the decision of the Board of Review, and (2) whether the Board correctly held that petitioner committed work-related misconduct within the meaning of the Employment Security Statutes. We find no error and affirm.

The vast majority of the facts are not in dispute. Petitioner was employed by West Tennessee Behavioral Center ("WTBC") in Jackson as a psychiatric technician. Her job responsibilities included, among other things, the assisting of patients with bathing and dressing. Petitioner, at that time pregnant, was examined by Dr. Jeff Ball

at a local clinic. Petitioner requested Dr. Ball, an obstetrician, to provide her with a statement to the effect that she required assistance in moving, restraining, and wrestling with patients. Dr. Ball granted her request and provided her with a statement to that effect, handwritten on a pre-printed form. Thereafter, petitioner left the statement from Dr. Ball in an unsealed envelope on her desk at work.

The following day, petitioner telephoned her workplace and asked a co-worker to find the statement on her desk and place it under her supervisor's door. Petitioner's supervisor, LaVonda Roberts, testified that she found Dr. Ball's statement taped to her door. She noticed that a check mark had been placed on the form next to the words "light duty," but that no duration as to the extent of light duty had been set forth in the appropriate space on the form. Three X's had also been marked through the following paragraph on the pre-printed portion of the form:

> The expected duration of disability with an uncomplicated pregnancy is four weeks prior to delivery and six weeks after delivery. Women who perform heavy work may require "light duty" from their sixth month of pregnancy until delivery, while some jobs may allow the woman to work until near term. The expected date of delivery is estimated and may obviously vary.

Roberts then called Dr. Ball's office and spoke with his nurse, who advised her that as Dr. Ball's nurse she had prepared the statement but that "light duty" had not been marked on the form. The following day Roberts telephoned Dr. Ball's office again to verify this. At this time she spoke with Dr. Ball's nurse and with Dr. Ball, both of whom advised her that petitioner had not been placed on light duty. When Roberts asked petitioner about the alterations on the form, petitioner admitted that she had marked out the pre-printed paragraphs with three X's, but denied that she had marked the light duty section of the form.

WTBC discharged petitioner shortly thereafter, based upon her violation of the institutions policy prohibiting falsification of a form or record. This policy was contained in petitioner's employee handbook, which petitioner acknowledged as having received on two occasions. Several days later petitioner filed her claim for

unemployment compensation benefits, which were denied on the grounds that she had been discharged for falsifying Dr. Ball's statement and that this constituted work-related misconduct. T.C.A. § 50-7-303(a)(2) (Supp. 1995).

The agency's decision was appealed to the TDES Appeals Tribunal. The appeals referee conducted a hearing on the issue of whether the petitioner voluntarily quit work without good cause or was discharged for misconduct. The sole witness on behalf of petitioner at the hearing was petitioner herself. She admitted to having marked out the pre-printed paragraph on the form inasmuch as she was not disabled or was not taking maternity leave. She denied having marked the space next to light duty. WTBC presented a written statement from Dr. Ball in which he stated that he had not place petitioner on light or restricted duty. Petitioner's supervisor, LaVonda Roberts, as well as Charlotte Pruett, WTBC's Director of Clinical Services, testified as to the facts we have outlined previously. Following the hearing, the Appeals Tribunal made the following findings of fact:

> FINDINGS OF FACT: The appeal was filed timely (sic), and Appeals Tribunal has jurisdiction. Claimant's most recent employment prior to filing this claim was with West Tennessee Behavioral Center, from November 5, 1992, until November 3, 1994, when she was discharged. On or about October 21, employer discovered a medical certificate left by claimant indicating that she was to be placed on light or restricted duty. There was other writing that had been marked through. The certificated did not indicate how long the light duty restrictions were to last, so the supervisor called the doctor to determine that. She was informed the doctor had not marked the light duty restriction section on the note. When claimant was questioned, she did admit marking through a written portion of the note but denied adding light duty restrictions.

Based upon these findings, the Appeals Tribunal made the following conclusions of law:

> CONCLUSIONS OF LAW: Claimant was discharged for altering a portion of a medical certificate she presented to the employer. While there is some dispute between the parties as to the amount of the alteration, there is no dispute that claimant did in fact alter a portion of the medical certificate. The Appeals Tribunal finds that discharge was for work connected misconduct within the meaning of T.C.A. § 50-7-303(a)(2). The Agency decision denying this claim is affirmed.

Upon petitioner's appeal to the Board of Review of the TDES, the Appeals

Tribunal's findings of fact were adopted by the Board and the denial of petitioner's claim was affirmed. While petitioner filed a petition to rehear with the Board of Review, none was scheduled because petitioner offered no new evidence and did not give a sufficient explanation as to why proposed witnesses at the previous hearings should have been heard. The petitioner's review was denied by the Board.

Following the filing of the petition for certiorari in the chancery court, the chancellor affirmed the Boards decision. This appeal followed.

The standard of judicial review applicable to unemployment compensation benefits cases where the trial court sits as an appellate court, is found in T.C.A. § 50-7-304(1)(3):

> (3)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 "such relevant evidence as a reasonable mind might accept to support a rational conclusion and such as to furnish a reasonably sound basis for the action under consideration." *See* Southern Ry. Co. v. State Bd. Of Equalization, 682 S.W.2d 196, 199 (Tenn. 1984). Our courts should not disturb a reasonable decision of any agency which has expertise, experience and knowledge in a particular field. Id.

From a consideration of the record before this Court that was the record

considered by all lower tribunals, we are of the opinion that the findings of fact made by the Appeals Tribunal and adopted by the Board of Review and considered by the chancellor contain substantial and material evidence.

The next obligation of this Court is to determine whether, under the facts found in this case, petitioner was guilty of "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) (Tenn. 1978). 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 in the statutes should be construed narrowly. Weaver v. Wallace, 565 S.W.2d 867, 869-70. Furthermore, the employer has the burden of proving that an employee should be disqualified from receiving unemployment benefits. Id. at 870.

In Armstrong v. Neel, 725 S.W.2d 953, 955 (Tenn. App. 1986), the middle section of this court ratified earlier unpublished opinions of this court adopting the misconduct standard found in Boynton Cab Co. v. Neubeck, 296 N.W. 636, 640 (1941). Armstrong 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. . .

Before this Court, petitioner contends that she was not guilty of work-related misconduct because (1) she did not commit a material breach of a duty owed by her to her employer when she crossed out the pre-printed portion of Dr. Ball's statement, (2) that the act of marking out the pre-printed paragraph was not a "falsification." She also contends that the Board of Review did not produce substantial and material evidence that she marked the light duty section of the form.

We find petitioner's contention to be without merit. Having acknowledged

receiving her employment manual, petitioner was put on notice that the falsification of a form or record, in connection with her employment, was grounds for dismissal. Petitioner owed her employer a duty not to falsify Dr. Ball's statement in any fashion. Petitioner contends that she crossed out a portion of the statement because she did not wish to mislead her employer concerning the duration of disability for an uncomplicated pregnancy. However, the remaining portion of the deleted paragraph concerns whether petitioner should be placed on light duty prior to delivery depending upon whether her job required "heavy work." This is an argument of semantics. There is no question petitioner presented to her employer a statement from Dr. Ball that she intentionally changed, in violation of her duty to her employer no to falsify forms or records.

Petitioner seeks to characterize her act as a harmless deletion of irrelevant information. Considering the fact that petitioner was examined by Dr. Ball originally for the purpose of receiving a statement that she would require assistance to handle patients, the act of crossing out the top portion of Dr. Ball's statement concerning light duty gave her employer the impression that the information had been deleted by Dr. Ball himself. There is no question that this deliberate act altered and gave a false appearance to the document. We are of the opinion that this act was in substantial disregard of her duty to her employer and constituted misconduct connected with her employment.

Lastly, petitioner concedes that the marking of light duty on Dr. Ball's statement would constitute a falsification of the document, but she contends that the Board did not present substantial and material evidence that she actually marked to space next to light duty. While the Appeals Tribunal found that the amount of alteration of the form was disputed, petitioner herself admitted to having altered the form to the extent noted. We agree this was work-related misconduct within the meaning of the statute.

Accordingly, the judgment of the trial court is affirmed. Costs on this cause on appeal are taxed to petitioner, for which execution may issue if necessary.

TOMLIN, Sr. J.

HIGHERS, J. (CONCURS)

LILLARD, J. (CONCURS)