

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG H. NEILSEN,
Appellant,
vs.
NEVADA EMPLOYMENT SECURITY
DEPARTMENT; BIRGIT BAKER, AS
ADMINISTRATOR FOR NEVADA
EMPLOYMENT SECURITY
DEPARTMENT; AND MARY STAVOY,
Respondents.

No. 43462

FILED

NOV 16 2005

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an unemployment compensation matter. Eighth Judicial District Court, Clark County; David Wall, Judge.

Appellant Craig H. Nielsen contends that substantial evidence does not support the Employment Security Board of Review's conclusion that Mary Stavoy is entitled to unemployment compensation.¹ We affirm.

In a quasi-judicial proceeding, the Board's factual findings are conclusive if supported by evidence and, in the absence of fraud, our jurisdiction is limited to questions of law.² Under NRS 612.385, an employee is ineligible for unemployment compensation if the employer discharges the employee for misconduct. Misconduct includes "[c]arelessness or negligence on the part of the employee of such a degree

¹Because the parties know the facts well, we recite them here only as necessary to our disposition.

²See NRS 233B.135(3); State, Emp. Sec. Dep't v. Holmes, 112 Nev. 275, 279, 914 P.2d 611, 614 (1996) (citing Gandy v. State ex rel. Div. Investigation, 96 Nev. 281, 282, 607 P.2d 581, 582 (1980)).

as to show a substantial disregard of the employer's interests or the employee's duties and obligations to his employer."³ To constitute misconduct, the employee's actions must have an element of willfulness or wrongfulness.⁴

In this case, Stavoy, a nurse, accompanied Neilsen, a quadriplegic, on a business trip to provide necessary nursing assistance for Neilsen. After Neilsen extended the business trip, Stavoy returned home without permission because she had already worked 90 hours that week and developed back problems. Neilsen contested Stavoy's claim for unemployment benefits.

At the administrative level, the appeals referee initially found that Stavoy engaged in willful misconduct by violating her employer's rules, to wit: leaving without permission. Because of some problem in the notices, Stavoy did not appear. Thereafter, the Board remanded the case to the referee for Stavoy to be present and testify. On remand, the appeals referee recommended denial of benefits, finding that Stavoy's attitude and behavior during the course of her employment constituted misconduct. The Board then reversed, noting that Stavoy had worked 90 hours during the week and began experiencing back pain. Neilsen filed a petition in district court for judicial review of the Board's decision, which the court denied.⁵

³Kraft v. Nev. Emp. Sec. Dep't, 102 Nev. 191, 194, 717 P.2d 583, 585 (1986) (quoting Barnum v. Williams, 84 Nev. 37, 41, 436 P.2d 219, 222 (1968)).

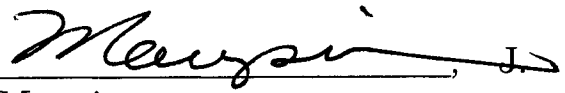
⁴See Kolnick v. State, Emp. Sec. Dep't., 112 Nev. 11, 15-16, 908 P.2d 726, 728-29 (1996).

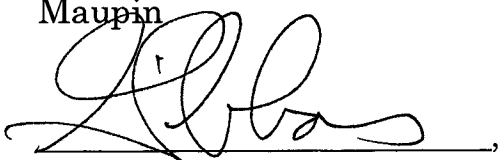
⁵See NRS 233B.130; NRS 233B.135.

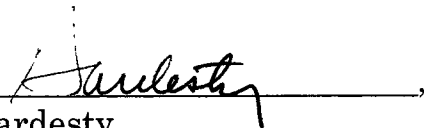
On appeal to this court, Neilsen contends that the Board's decision that Stavoy did not engage in willful misconduct is unsupported by substantial evidence.⁶ We disagree. While the appeals referee concluded that Stavoy engaged in willful misconduct because of her "history of attitude and anger management problems" and "demanding attitude when she requested the additional staff," the Board could reasonably conclude that her departure after developing back pain following a 90-hour work week was not the product of willful misconduct.

Neilsen argues that Stavoy engaged in willful misconduct based upon her abandonment of him in violation of the Nevada State Board of Nursing Rules of Professional Conduct. We conclude that this allegation does not compel reversal. While Stavoy's conduct arguably violated the applicable nursing standards embodied in the code, there is sufficient evidence in this record to demonstrate that Stavoy's failure to comply with the rules was not willful or wrongful misconduct within the meaning of NRS 612.385 and our cases construing it. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.

Maupin

_____, J.
Gibbons


_____, J.
Hardesty

⁶See NRS 233B.135(3)(e).

cc: Hon. David Wall, District Judge
Kamer Zucker & Abbott
Crowell Susich Owen & Tackes
Law Office of Daniel Marks
Clark County Clerk