

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIGIST KEBEBE,
Appellant,
vs.
STATE OF NEVADA, DEPARTMENT
OF EMPLOYMENT, TRAINING AND
REHABILITATION, EMPLOYMENT
SECURITY DIVISION,
Respondents.

No. 53649

FILED

JUL 19 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in an employment action. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Red Rock Station Casino (Red Rock) terminated the employment of Appellant Tigist Kebebe because she left work before her shift ended without receiving prior approval. When Kebebe applied for unemployment benefits, respondent State of Nevada, Department of Employment, Training and Rehabilitation, Employment Security Division, (ESD) denied her benefits pursuant to NRS 612.380 for voluntarily leaving her employment.

An appeals referee set aside ESD's initial determination and instead found Kebebe ineligible for benefits because of work misconduct pursuant to NRS 612.385. The appeals referee found that Red Rock demonstrated by a preponderance of the evidence that Kebebe violated Red Rock's reasonable policy requiring prior approval before prematurely ending a work shift. Kebebe appealed to the Board of Review (Board) and the Board affirmed, adopting both the findings of fact and reasons of the appeals referee.

Kebebe then petitioned for judicial review of the Board's decision. The district court denied the petition and Kebebe now appeals to this court. On appeal, Kebebe argues that substantial evidence did not support the appeals referee's decision. Specifically, Kebebe claims that ESD wrongly found her ineligible for unemployment benefits because leaving work without authorization was an honest mistake that was not done in willful violation or disregard of Red Rock's employment policies.

"This court reviews an administrative decision in the same manner as the district court." State, DMV v. Taylor-Caldwell, 126 Nev. ___, ___, 229 P.3d 471, 472 (2010). The district court must limit its determination to whether the Board acted arbitrarily or capriciously and uphold the decision if supported by substantial evidence in the record. Leeson v. Basic Refractories, 101 Nev. 384, 385-86, 705 P.2d 137, 138 (1985); see also NRS 612.530(4). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. Clark County Sch. Dist. v. Bundley, 122 Nev. 1440, 1445; 148 P.3d 750, 754 (2006) (citing Kolnik v. State, Emp. Sec. Dep't, 112 Nev. 11, 16, 908 P.2d 726, 729 (1996)).

A person discharged for misconduct connected with the person's work is ineligible for unemployment benefits. NRS 612.385. Disqualifying misconduct occurs when an employee deliberately and unjustifiably violates or disregards her employer's reasonable policy or standard or otherwise acts in such a careless or negligent manner as to "show a substantial disregard of the employer's interests or the employee's duties and obligations to [her] employer." Bundley, 122 Nev. at 1445-46; 148 P.3d at 755 (alteration in original) (quoting Kolnik, 112 Nev. at 15, 908 P.2d at 729) (quoting Barnum v. Williams, 84 Nev. 37, 41,

436 P.2d 219, 222 (1968)); see also Kraft v. Nev. Emp. Sec. Dep't, 102 Nev. 191, 194, 717 P.2d 583, 585 (1986) (employee has duty to consider interests of employer and to act as reasonably prudent person would act).

Here, Red Rock terminated Kebebe's employment, pursuant to company policy, for leaving work without authorization. Kebebe worked as a dealer during the swing shift, 8 p.m. to 4 a.m., and received one 20-minute break after every hour worked. On nights when business was slow, Kebebe's supervisor would frequently excuse her before the end of her shift. On the night of her discharge, business was slow and Kebebe was given a work break at 3:20 a.m. All the dealers sent on break, except Kebebe, walked through the "pit" area to the supervisor to await further instructions. Kebebe, however, walked along the outside of the "pit" and left the casino.

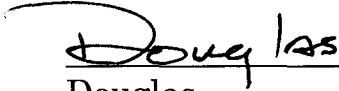
Kebebe claims she heard her supervisor say "good-bye" to her and five other dealers as they passed by, which she understood to mean she was excused. Kebebe further claims that all five dealers were from Pit 2, the same pit she had worked. However, she was unable to produce their names. Moreover, Mike McDaniel, Kebebe's supervisor, and Jim DeSellems, the Casino Shift Manager, deny saying anything to Kebebe or excusing any dealers from Pit 2. Red Rock also presented surveillance footage which confirms that Kebebe was the only dealer from Pit 2 to leave at that time.


ESD and Red Rock additionally presented evidence, in the form of sworn testimony, that dealers always approach the shift supervisor and wait for him to excuse the employees. They don't just walk away before checking in with a supervisor. The surveillance footage shows that Kebebe avoided McDaniel, while the other dealers on break

approached him for instruction on whether to stay at work or go home. Kebebe did not hesitate when walking away from the casino floor and the supervisor did not direct his attention towards her. Therefore, we conclude that a reasonable mind would accept this evidence as adequate to conclude that Kebebe's actions disregarded Red Rock's interests and disregarded Kebebe's duty and obligation to Red Rock. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Elissa F. Cadish, District Judge
William F. Buchanan, Settlement Judge
Law Offices of Michael P. Balaban
John Thomas Susich
Eighth District Court Clerk