

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICKIE REEVES,  
Appellant,

vs.

JOHN BARSANTI INSURANCE;  
NEVADA DEPARTMENT OF  
EMPLOYMENT, TRAINING AND  
REHABILITATION, EMPLOYMENT  
SECURITY DIVISION,  
Respondents.

No. 55209

**FILED**

**DEC 05 2011**

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review of an unemployment benefits action. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

After being terminated from her employment as a receptionist for respondent John Barsanti Insurance, appellant Nickie Reeves filed a claim for unemployment benefits. An appeals referee for the State of Nevada, Department of Employment, Training, and Rehabilitation, Employment Security Division denied the claim. Specifically, the referee found that Reeves routinely made mistakes, such as misspelling client names and recording inaccurate insurance policy information, and that overall, Reeves' work performance was negligent and careless over an extended period of time. After the Employment Security Division's Board of Review (Unemployment Board) affirmed the referee's determination, Reeves petitioned the district court for judicial review. The district court denied the petition, and now Reeves appeals to this court. On appeal, Reeves argues that her administrative hearing was one-sided and requests that this court reinstate her claim for unemployment benefits, with interest, and that damages be awarded.

In reviewing an administrative decision, this court, like the district court, may not substitute its judgment for that of the

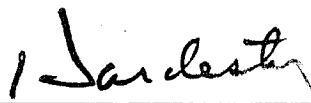
administrative tribunal on the weight of evidence on any question of fact. NRS 233B.135(3); Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 362, 184 P.3d 378, 383-84 (2008) (noting that this court's level of review of administrative decisions mirrors that of the district court). Rather, this court will generally review an administrative decision to determine whether the decision is supported by substantial evidence, "which is evidence that a reasonable mind could find adequately upholds a conclusion." Clark County Sch. Dist. v. Bundley, 122 Nev. 1440, 1445, 148 P.3d 750, 754 (2006). Nonetheless, an administrative decision may be set aside if it is "affected by error of law," Dredge v. State ex rel. Dep't Prisons, 105 Nev. 39, 43, 769 P.2d 56, 58-59 (1989), or if the decision is arbitrary or capricious or constitutes an abuse of discretion. NRS 233B.135(3)(f).


Under NRS 612.385, a person is ineligible for unemployment benefits if the person was discharged from his or her work for "misconduct." This court has previously explained that misconduct occurs when, for example, an employee "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 (internal quotation marks omitted). NRS 612.385 also requires an "element of wrongfulness." Bundley, 122 Nev. at 1446, 148 P.3d at 755. "Mere inefficiency or failure of performance because of inability or incapacity, ordinary negligence in isolated instances, or good faith errors in judgment or discretion are excluded in the definition of misconduct." Barnum v. Williams, 84 Nev. 37, 41, 436 P.2d 219, 222 (1968).

Having reviewed Reeves' appellate arguments and the record on appeal, we conclude that the Unemployment Board's decision to deny Reeves' claim for benefits, on the basis that Reeves was discharged for

reasons constituting NRS 612.385 "misconduct," was supported by substantial evidence, as her employment conduct demonstrated a substantial enough disregard for her employer's interests to include an element of wrongfulness, Bundley, 122 Nev. at 1445-46, 148 P.3d at 755, and that this court may not substitute its judgment for that of the administrative tribunal regarding the weight of the evidence. NRS 233B.135(3). Accordingly, as we conclude that the Unemployment Board's decision was not arbitrary, capricious, or an abuse of discretion, NRS 233B.135(3)(f), the district court properly denied the petition for judicial review, and thus we

ORDER the judgment of the district court AFFIRMED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

DOUGLAS, J., dissenting:

I disagree that the circumstances that led to the termination of Reeve's employment demonstrate the degree of wrongfulness necessary to amount to "misconduct" under NRS 612.385. The denial of Reeve's claim was not in keeping with the purposes behind unemployment compensation. See Barnum v. Williams, 84 Nev. 37, 41, 436 P.2d 219, 222 (1968) (explaining that ordinary inefficiency or negligence during the

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<sup>1</sup>We direct the clerk of this court to amend the caption to match how it is set forth in this order.

course of one's employment does not warrant the denial of unemployment benefits). I would therefore reverse the district court and grant the petition for judicial review.

  
\_\_\_\_\_, J.  
Douglas

cc: Hon. Janet J. Berry, District Judge  
Nickie Reeves  
Arrascada & Arrascada, Ltd.  
State of Nevada/DETR  
Washoe District Court Clerk