

IN THE SUPREME COURT OF THE STATE OF NEVADA

KATRINA GARCIA,  
Appellant,  
vs.  
THE STATE OF NEVADA  
EMPLOYMENT SECURITY DIVISION;  
CYNTHIA JONES, IN HER CAPACITY  
AS ADMINISTRATOR OF THE  
NEVADA EMPLOYMENT SECURITY  
DIVISION; KATIE JOHNSON, IN HER  
CAPACITY AS CHAIRPERSON OF THE  
NEVADA EMPLOYMENT SECURITY  
DIVISION BOARD OF REVIEW; AND A  
CAB, LLC, AS EMPLOYER,  
Respondents.

No. 59086

FILED

JAN 18 2013

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a petition for judicial review in an unemployment benefits action. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

Appellant was an employee of respondent A Cab, LLC where she worked as a taxi cab driver for two weeks in March 2010. Her employment was terminated after she failed to turn in the full amount of her book money at the end of two of her shifts. Thereafter, appellant filed a claim for unemployment benefits, which respondent State of Nevada Employment Security Division denied. Specifically, the appeals referee found that appellant's failure to turn in all the money she earned during her shift, after she had received a prior warning regarding the same transgression, demonstrated a deliberate violation or disregard of a reasonable standard of conduct, and thus constituted misconduct that warranted appellant's disqualification from receiving unemployment



benefits. The Employment Security Division's Board of Review declined further review of the referee's determination, and appellant filed a petition for judicial review in the district court. The district court denied the petition, and this appeal followed. On appeal, appellant argues that the referee erred in finding that her termination was for misconduct that disqualified her from receiving unemployment benefits.

In reviewing an administrative decision in an unemployment benefits matter, this court, like the district court, determines whether the board acted arbitrarily or capriciously. NRS 233B.135(3)(f); McCracken v. Fancy, 98 Nev. 30, 31, 639 P.2d 552, 553 (1982). The administrative decision will not be disturbed if it is supported by substantial evidence. Leeson v. Basic Refractories, 101 Nev. 384, 385-86, 705 P.2d 137, 138 (1985) (citing State, Emp. Sec. Dep't. v. Weber, 100 Nev. 121, 124, 676 P.2d 1318, 1320 (1984)). "Substantial evidence is that which a reasonable mind could find adequate to support a conclusion." Kolnik v. State, Emp. Sec. Dep't, 112 Nev. 11, 16, 908 P.2d 726, 729 (1996).

Under NRS 612.385, if a person was discharged from work for "misconduct," he or she is ineligible for unemployment benefits. A willful violation of duties or disregard for an employer's interests may constitute such misconduct. Garman v. State, Employment Security Dep't, 102 Nev. 563, 565, 729 P.2d 1335, 1336 (1986) (defining misconduct "as 'a deliberate violation or a disregard of reasonable standards, carelessness or negligence showing substantial disregard of duties'"); see also Employment Sec. Dep't v. Verrati, 104 Nev. 302, 304, 756 P.2d 1196, 1197-98 (1988).

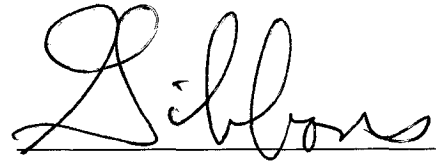
Having reviewed appellant's arguments and the record on appeal, we conclude that substantial evidence supports the referee's

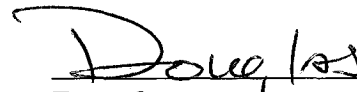
finding that appellant was discharged for reasons constituting misconduct that disqualified her from unemployment benefits under NRS 612.385. The record reveals that appellant failed to turn in the full amount of her book money after her shift on March 19, 2010. She then received a written warning from her employer, which stated that failure to turn in her book money could result in her termination. Four days later, appellant again failed to turn in the full amount of her book money. Appellant testified that the first incident occurred because she had put the money in her coat pocket, placed the coat in the trunk of the taxi cab, and the coat was taken by a customer. She testified that the second incident occurred because she had given change to a customer without collecting his payment and had left the meter running on another fare after dropping the customer off. The appeals referee considered appellant's testimony and testimony from other witnesses and determined that appellant's testimony was not credible. See Lellis v. Archie, 89 Nev. 550, 554, 516 P.2d 469, 471 (1973) (recognizing that this court will not substitute its judgment for that of the referee on issues of credibility or the weight of the evidence).


Under these circumstances, we conclude that substantial evidence in the record supports the appeals referee's ruling that appellant's conduct constituted misconduct under NRS 612.385 and thereby disqualified her from receiving unemployment benefits. See Kolnik, 112 Nev. at 16, 908 P.2d at 729 (noting that whether an employee's negligence constituted willful misconduct is a question of law); but see Garman, 102 Nev. at 565, 729 P.2d at 1336 (recognizing that when misconduct becomes a mixed question of law and fact, the agency's determination must be given deference similar to that given to findings of fact when supported by substantial evidence). Accordingly, the Board's

decision to affirm the appeals referee's ruling was not arbitrary or capricious, and thus we affirm the district court's denial of appellant's petition for judicial review.

It is so ORDERED.<sup>1</sup>

  
\_\_\_\_\_, J.  
Gibbons

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

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Rob Bare, District Judge  
Katrina Garcia  
Esther Rodriguez  
State of Nevada/DETR  
Eighth District Court Clerk

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<sup>1</sup>Having considered appellant's remaining arguments, we conclude that they lack merit.