

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

PALMER CHRISTOPHER,
Appellant,
vs.
THE STATE OF NEVADA
EMPLOYMENT SECURITY DIVISION,
Respondent.

No. 71156

FILED

AUG 17 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Palmer Christopher appeals from a district court order denying a petition for judicial review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Christopher was employed as an assistant judicial chambers administrator for the Nevada Supreme Court until her termination on May 14, 2015. Her employment was terminated because she used her position to access certain confidential records related to two of her personal legal matters without authorization and in violation of the Code of Conduct for Supreme Court of Nevada Employees (Code of Conduct).

Thereafter, Christopher filed a claim for unemployment benefits, which respondent State of Nevada Employment Security Division (ESD) denied. Specifically, the appeals referee found that Christopher's actions in using her position to access confidential records related to two closed cases in which she was a party, the appearance of impropriety these actions created and her improper use of public resources, demonstrated a deliberate violation or disregard of reasonable standards of conduct. The referee further found that this conduct contained an element of wrongfulness and thus, constituted misconduct that disqualified

Christopher from receiving unemployment benefits. The ESD's Board of Review declined review of this determination, and Christopher filed a petition for judicial review in the district court, which was denied. This appeal followed. On appeal, Christopher disputes the referee's finding that her termination was for misconduct that disqualified her from receiving unemployment benefits.

This court reviews an administrative agency's decision to determine whether it was arbitrary, capricious, or an abuse of discretion. NRS 233B.135(3)(f). "If the agency determination is based on substantial evidence, the inquiry ends, for neither this court nor the district court is at liberty to substitute its judgment for that of the agency." *Garman v. State, Emp't Sec. Dep't*, 102 Nev. 563, 565, 729 P.2d 1335, 1336 (1986). "Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion." *United Exposition Serv. Co. v. State Indus. Ins. Sys.*, 109 Nev. 421, 424, 851 P.2d 423, 424-25 (1993).

Misconduct under NRS 612.385 "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." *Clark Cty. Sch. Dist. v. Bundley*, 122 Nev. 1440, 1445-46, 148 P.3d 750, 754-55 (2006) (alteration in original) (internal quotations and citations omitted). Additionally, to constitute disqualifying misconduct, the conduct at issue must contain an element of wrongfulness. *Id.* at 1446, 148 P.3d at 755. "Findings of misconduct present mixed questions of law and fact, which are generally given deference unless they are not supported by substantial

evidence.” *Goodwin v. Jones*, 132 Nev. ___, ___, 368 P.3d 763, 768 (Nev. Ct. App. 2016).

Here, the record demonstrates that Christopher admitted that she accessed information related to two closed cases in which she was a party and that she failed to articulate why she was accessing this information. Further, declarations provided by the employer, taken together with computer logs attached thereto, show that the information Christopher accessed included confidential information regarding these cases and that she took these actions during work hours without a job related reason for doing so. Based on this evidence, the referee found that Christopher violated Canons of the Code of Conduct that prohibited employees from engaging in activities that would call into question the propriety of judicial employees carrying out the duties of the office (Canon 1.2) and that require employees to use the resources under their control judiciously and in accordance with prescribed procedures (Canon 2.8). The referee further determined that her violation of these canons was deliberate and wrongful.


Having reviewed Christopher’s arguments and the record on appeal, we conclude that substantial evidence¹ supports these findings and


¹To the extent Christopher argues the referee’s decision was not based upon substantial evidence because her faxed submission to the appeals tribunal was not included in the record, we conclude this argument is waived as Christopher failed to object or otherwise bring this issue to the referee’s attention as he listed each of the documents that were to be admitted into evidence at the administrative hearing. *See State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (concluding that a party waives arguments made for the first time to the district court on judicial review).

the resulting determination that Christopher was discharged for reasons constituting misconduct that disqualified her from unemployment benefits under NRS 612.385. Accordingly, we conclude that the Board's decision to affirm the appeals referee's ruling was not arbitrary or capricious, and thus we affirm the denial of Christopher's petition for judicial review.

It is so ORDERED.²


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Mark R. Denton, District Judge
Palmer Christopher
State of Nevada/DETR
Eighth District Court Clerk

²Having considered Christopher's remaining arguments, we conclude they do not provide a basis for relief.