

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HEZEKIAH BAKER,

Appellant,

vs.

THE STATE OF NEVADA

EMPLOYMENT SECURITY DIVISION;

RENEE OLSON, IN HER CAPACITY AS

ADMINISTRATOR OF THE

EMPLOYMENT SECURITY DIVISION;

KATIE JOHNSON, IN HER CAPACITY

AS CHAIRPERSON OF THE

EMPLOYMENT SECURITY DIVISION;

AND GNLV CORP., EMPLOYER,

Respondents.

No. 76580-COA

**FILED**

FEB 14 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Hezekiah Baker appeals from a district court order denying a petition for judicial review in an unemployment benefits matter. Eighth Judicial District Court, Clark County; James Crockett, Judge.

As a new employee with GNLV Corporation, which operated the Golden Nugget Hotel and Casino, Baker was required to complete a probationary period. When Baker did not report for a shift during the probationary period, his supervisor called and emailed him asking where he was and threatening disciplinary action. But the supervisor later concluded that disciplinary action against Baker was unwarranted because there had been a misunderstanding regarding whether Baker was scheduled to work the shift. Baker then reported the incident to a GNLV employee relations representative who instructed Baker to let her investigate the matter and indicated that she would speak with him further following the investigation.

Approximately one hour later, Baker sent the supervisor an e-mail in which he referenced his conversation with the representative, indicated that he advised the representative that the supervisor should see a psychiatrist and be drug tested, and warned the supervisor that he may be subject to an investigation and disciplinary action. And Baker concluded that email by directing the supervisor to "get [him]self together" and by expressing that he was ashamed of the supervisor. Shortly thereafter, GNLV terminated Baker's employment on the ground that he sent a rude and discourteous e-mail that violated its policy against disrespectful conduct and that he failed to successfully complete his probationary period as a result.

Baker filed a claim for unemployment benefits, which respondent the State of Nevada Employment Security Division denied. Specifically, the appeals referee concluded that Baker committed disqualifying misconduct, reasoning that his actions were unwarranted and wrongful and that, by sending the e-mail, Baker deliberately violated GNLV's policy against disrespectful conduct. ESD's Board of Review affirmed that decision, adopting the appeals referee's findings, and Baker filed a petition for judicial review, which the district court denied. This appeal followed. On appeal, Baker disputes the Board's finding that he was terminated for misconduct that disqualified him from receiving unemployment benefits.

In reviewing an administrative decision in an unemployment benefits matter, this court, like the district court, evaluates whether the Board acted arbitrarily and capriciously and thereby abused its discretion. *See* NRS 233B.135(3)(f); *Clark Cty. Sch. Dist. v. Bundley*, 122 Nev. 1440, 1444, 148 P.3d 750, 754 (2006). But because the Board is "an independent

trier of fact” that reviews the appeals referee’s decision de novo, its findings are conclusive if they are supported by substantial evidence, which is evidence that a reasonable mind may accept as adequate to support a conclusion. *See* NRS 612.530(4); *Bundley*, 122 Nev. at 1444-45, 148 P.3d at 754 (internal quotation marks omitted). Thus, although this court reviews strict questions of law de novo, the Board’s fact-based legal conclusions regarding a claimant’s eligibility for unemployment benefits are entitled to deference. *See Bundley*, 122 Nev. at 1445, 148 P.3d at 754.

Under NRS 612.385, a claimant is ineligible for unemployment benefits if the claimant’s employment was terminated for misconduct connected to the claimant’s work. In this regard, “misconduct occurs when an employee deliberately and unjustifiably violates or disregards [the] employer’s reasonable policy or standard” and there is an element of wrongfulness to that action. *See id.* at 1445-46, 148 P.3d at 754-55.

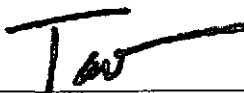
On appeal, Baker does not dispute that he sent the e-mail described above or that he was aware of GNLV’s policy against disrespectful conduct at all times relevant to this case. Instead, he challenges the Board’s determination that he committed disqualifying misconduct by arguing that the e-mail was not disrespectful or otherwise wrongful because it simply provided a word-for-word account of his conversation with the employee relations representative.

But insofar as Baker is disputing whether he intended the email to be disrespectful, his position is unsupported by the record as he did not testify below or otherwise present any evidence to support his assertion. Moreover, the question here is not whether the content of the email, when read in isolation, was wrongful or disrespectful. Indeed, because the uncontested evidence in the record demonstrates that Baker sent this email

notwithstanding an express directive from the employee relations representative with whom he spoke, we are specifically concerned with whether Baker acted wrongfully and violated GNLV's policy against disrespectful conduct under the particular circumstances of this case. And because substantial evidence supported the Board's affirmative resolution of that mixed question, its decision is entitled to deference. *See id.* at 1445, 148 P.3d at 754. Thus, despite Baker's arguments to the contrary, we conclude that the Board did not act arbitrarily or capriciously or otherwise abuse its discretion in concluding that he committed misconduct that disqualified him from receiving unemployment benefits under NRS 612.385. *See id.* at 1444-46, 148 P.3d at 754-55. Accordingly, we affirm the district court's order denying Baker's petition for judicial review of that decision.

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

  
\_\_\_\_\_, A.C.J.  
Douglas

  
\_\_\_\_\_, J.  
Tao

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

cc: Hon. James Crockett, District Judge  
Hezekiah Baker  
Kamer Zucker Abbott  
State of Nevada/DETR  
Eighth District Court Clerk

---

<sup>1</sup>Having considered Baker's remaining arguments, we conclude that they do not provide a basis for relief. And given our disposition of this appeal, we deny Baker's request for this court to direct respondents to file answering briefs as moot.