

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT GENTILE,

Plaintiff-Appellee,

v

HENRY FORD WYANDOTTE HOSPITAL,

Defendant-Appellant,

and

DEPARTMENT OF CONSUMER & INDUSTRY  
SERVICES,

Defendant.

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UNPUBLISHED

March 1, 2005

No. 250969

Wayne Circuit Court

LC No. 03-312665-AE

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Defendant Henry Ford Wyandotte Hospital appeals by leave granted a circuit court order reversing the Michigan Employment Security Board of Review's decision finding that the hospital discharged plaintiff Robert Gentile for "misconduct" within the meaning of MCL 421.29(1)(b), thereby disqualifying him from receiving unemployment benefits. We reverse. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Gentile began work at the hospital in March 1998 as a driver for the central distribution department, which required him to deliver and pick up various materials in the hospital's cargo van. The hospital terminated Gentile on April 23, 2002, after he had his third accident with the van.

After the hospital terminated Gentile, he filed for unemployment benefits with the Michigan Bureau of Workers' and Unemployment Compensation. The hospital contested the

claim, relying on MCL 421.29(1)(b), which, at the time of the termination, provided that “[a]n individual is disqualified from receiving benefits if he or she . . . [w]as discharged for misconduct connected with the individual’s work[.]”<sup>1</sup> The Bureau disagreed and ruled that Gentile was entitled to benefits, finding that there was no evidence that he deliberately caused damage to the hospital’s vehicle and that the Hospital did not establish misconduct.

The hospital protested the decision and requested a hearing on the matter, which took place on in October 2002, before a hearing referee. The evidence at the hearing established that Gentile had three documented accidents with the van. The first accident occurred in June 2001, when Gentile ran into the receiving dock, causing a broken light and fender damage; he paid \$200 to repair the damage. On June 26, 2001, Gentile’s supervisor, Richard Gray, gave Gentile a “disciplinary warning form,” which documented the incident and indicated that this was a “first level written warning.” That form indicated that Gentile pulled into the receiving dock and hit the bumper guard on the dock, causing a dent and broken parking light on the front end of the van and that he failed to report this. The form also indicated that Gray had spoken to Gentile previously about other incidents with the van. Those incidents resulted in minor dents and scratches. Gentile signed this form, thereby indicating that he had received a copy of the form and that he understood that further violations would result in discipline up to and including termination.

The second documented incident occurred in September 2001. Gentile ran into another vehicle with the van, causing damage to the other vehicle but not to the Hospital’s van. Gray completed a second disciplinary warning form that documented this incident and indicated that Gentile would be suspended if there was another incident. Gray claimed that he presented the form to Gentile, reviewed it with him, and informed him that he would be terminated if there was another accident. However, Gray admitted that Gentile did not sign the form.

The last incident occurred on April 17, 2002. Gentile was driving the hospital’s van in an alley when he ran into a dumpster. The van sustained extensive damage and was totaled as a result. Gray viewed the scene of the accident and concluded that Gentile caused the accident by driving too fast. Gray observed that Gentile struck the dumpster with enough velocity to move it an estimated 50 to 70 feet. Grey felt that the accident was caused by gross negligence due to speeding, based on the damage to the van and how far the dumpster was moved. The hospital suspended Gentile and informed him that this was his third write-up. Gray completed another disciplinary warning form that documented the accident. This form, which both Gentile and Gray signed, indicated that this was Gentile’s third warning and that he was therefore terminated. Gray testified that he told Gentile that three write-ups within a year meant that he had to be terminated.

Gentile testified about the April 2002 accident. He denied that he was speeding. He explained that he was taking a shortcut through the alley at the time of the accident. According to Gentile, he hit the dumpster when he attempted to avoid another vehicle.

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<sup>1</sup> 2002 PA 192 amended the statute effective April 26, 2002.

The hearing referee reversed the decision of the Bureau and ruled that Gentile was disqualified from receiving unemployment compensation. The hearing referee concluded that Gentile's actions constituted misconduct within the meaning of § 29(1)(b) and, therefore, he was disqualified from receiving unemployment benefits.

Gentile appealed to the Employment Security Board of Review, which affirmed the hearing referee's decision and later denied Gentile's motion for rehearing. Gentile appealed to the circuit court and that court reversed the Board of Review's decision, holding that the record did not permit a conclusion that Gentile engaged in misconduct and, therefore, he was entitled to unemployment benefits. The hospital filed an application for leave to appeal, which this Court granted.

## II. Standard Of Review

We review administrative decisions according to the following standards:

[A] court that conducts a direct review of an administrative decision must determine whether the action was authorized by law and if the decision was supported by competent, material, and substantial record evidence. Substantial evidence is evidence that reasonable persons would accept as sufficient proof to support a decision. However, "when reviewing a lower court's review of agency action this Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings."<sup>[2]</sup>

In this context, this Court's review of the circuit court's decision is essentially a clearly erroneous standard of review.<sup>3</sup>

## III. Employee Misconduct

An individual is not entitled to receive unemployment benefits if the individual's employment was terminated because of misconduct related to the job.<sup>4</sup> In *Carter v Michigan Employment Security Comm*,<sup>5</sup> the Michigan Supreme Court adopted the following definition of "misconduct" for purposes of § 29(1)(b):

"The term 'misconduct' . . . is limited to conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of

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<sup>2</sup> *Motycka v General Motors Corp*, 257 Mich App 578; 669 NW2d 292 (2003), quoting *Boyd v Civil Service Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996) (internal citations omitted).

<sup>3</sup> See *Boyd, supra* at 234-235.

<sup>4</sup> MCL 421.29(1)(b).

<sup>5</sup> *Carter v Michigan Employment Security Comm*, 364 Mich 538, 541; 111 NW2d 817 (1961).

his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good-faith errors in judgment or discretion are not to be deemed 'misconduct' within the meaning of the statute."<sup>[6]</sup>

A finding of misconduct under the statute may be based on a series of derelictions and infractions that, taken alone, would not rise to the level of misconduct.<sup>7</sup>

In this case, we conclude that there was competent, material, and substantial evidence on the record to support the finding of misconduct. The hospital employed Gentile as a driver and he was responsible for delivering and picking up materials in the hospital's cargo van. The evidence indicated that Gray had counseled Gentile about prior incidents with the van resulting in minor dents and scratches. Gentile was subsequently involved in three accidents with the van, the last one so serious that the van was totaled. Both the hearing referee and the Board of Review agreed with the Gray's assessment that the latter accident resulted from Gentile's gross negligence. There is competent, material, and substantial evidence supporting this conclusion, given the evidence that Gentile struck a dumpster, that the accident occurred in an alley during daylight, and that Gentile struck the dumpster with such force that it moved the dumpster approximately fifty feet and damaged the van to the extent that it was totaled. Considering Gentile's prior history of driving accidents and warnings that future conduct would result in termination, together with the evidence of the degree of severity of the last accident, there was competent, material, and substantial evidence that Gentile willfully disregarded the hospital's interests through carelessness or negligence of such a degree or recurrence to show an intentional and substantial disregard of those interests and Gentile's obligations to the hospital.

Because the evidentiary record supported the hearing referee's and Board of Review's findings of misconduct, we conclude that the circuit court clearly erred in reversing the Board of Review's decision.

Reversed.

/s/ Michael J. Talbot  
/s/ William C. Whitbeck  
/s/ Kathleen Jansen

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<sup>6</sup> *Id.*, quoting *Boynton Cab Co v Neubeck*, 237 Wis 249, 259-260; 296 NW 636 (1941).

<sup>7</sup> See *Christophersen v Menominee*, 137 Mich App 776, 780; 359 NW2d 563 (1984).