

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SHERYL D. WATSON,

Plaintiff and Appellant,

v.

CALIFORNIA UNEMPLOYMENT  
INSURANCE APPEALS BOARD,

Defendant and Respondent.

D059486

(Super. Ct. No. 37-2011-00083797-CU-  
WM-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Michael S. Groch, Judge. Affirmed.

Sheryl D. Watson, appearing in propria persona, filed a petition for writ of administrative mandate in the superior court to review a decision of the California Unemployment Insurance Appeals Board (the Board) denying her claim for unemployment compensation benefits. The superior court denied the petition, and Watson appeals from the superior court's order denying the requested relief. The Board declined to file a respondent's brief. We affirm.

## FACTS AND PROCEDURE

Watson worked as a legal secretary for her employer, Solomon, Grindle, Silverman & Wintringer, APC (the employer), for about a year until her termination on April 8, 2010. (All further dates are in 2010.) The Employment Development Department (EDD) concluded that Watson was eligible for unemployment insurance benefits. Watson's employer appealed the decision.

Administrative Law Judge Rachel Soltero (the ALJ) held a hearing where she heard testimony from Watson and employer representatives, Crystal Harper and Susan Patten. The ALJ reversed the EDD's determination and ruling and made the following factual findings:

During Watson's employment, a coworker was terminated. Unbeknownst to Watson, the employer assigned the terminated employee's work station to another person. Shortly thereafter, the employer discovered items belonging to it and an employee were missing, including a keyboard, mouse and cable. Watson initially denied knowing anything about the work station, but then admitted that she took the keyboard and mouse, replaced them with her old keyboard and mouse, and that she allowed the former employee into the building to collect personal belongings.

The employer telephoned the former employee, who denied having entered the premises. The former employee explained that she had asked Watson and another individual to retrieve her personal items for her. At a meeting with her employer, Watson apologized for letting the former employee onto the premises and claimed the former employee was lying about not being on the premises. The employer, however, reviewed

security tapes and concluded that the former employee did not enter the building. Rather, the tapes showed Watson leaving the premises at 10:00 p.m. carrying an armload of items.

The following day, Watson admitted swapping the equipment because her keyboard was sticking. Pending an investigation, the employer instructed Watson, among other things, that she could not be on the employer's premises before 6:00 a.m. and after 6:00 p.m., and that any violation could lead to termination. Thereafter, the employer discovered that Watson had left the premises at 6:48 p.m. in violation of its directive and terminated Watson's employment. The ALJ concluded that Watson was disqualified for benefits because she "breached a substantial duty owed to the employer" by suggesting a former employee was guilty of wrongdoing.

The Board concluded that the ALJ's findings were in accord with the weight of the evidence and affirmed the ALJ's decision. Watson filed a petition for a writ of administrative mandate in the superior court challenging the Board's decision. After hearing oral argument and considering the evidence, the trial court denied the petition. Watson timely appealed.

## DISCUSSION

### *I. Timeliness of Employer's Appeal*

Watson asserts that the employer's appeal of the EDD's decision was untimely. We disagree.

Following a determination as to the claimant's eligibility, the claimant or employer may appeal within 20 days from the mailing or personal service of notice of the

determination. (Unemp. Ins. Code, § 1328, undesignated statutory references are to this code.) Here, the EDD found Watson eligible for benefits on April 26. Seventeen days later, on May 13, the employer timely appealed the EDD's decision.

## II. *Substantial Evidence Supported the Trial Court's Decision*

### A. General Legal Principles

An individual is disqualified from unemployment compensation benefits if the director finds that the individual "has been discharged for misconduct connected with his or her most recent work . . . ." (§ 1256.) "[T]he 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 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.' [Citation.]" (*Maywood Glass Co. v. Stewart* (1959) 170 Cal.App.2d 719, 724.) The employer has the burden of establishing misconduct by a preponderance of the evidence. (*Cerberonics, Inc. v. Unemployment Ins. Appeals Bd.* (1984) 152 Cal.App.3d 172, 176.)

In an administrative mandamus petition challenging eligibility for unemployment benefits, the trial court independently reviews the evidence in the administrative record. (Code Civ. Proc., § 1094.5; *MacGregor v. Unemployment Ins. Appeals Bd.* (1984) 37 Cal.3d 205, 211-212 (*MacGregor*)). The court makes its own findings and conclusions based on the evidence before it and we will uphold these conclusions on appeal if they are supported by substantial evidence. (*MacGregor*, at p. 212.) Under the substantial evidence standard, our "review of the record is limited to a determination whether substantial evidence supports the trial court's conclusions and, in making that determination, we must resolve all conflicts and indulge all reasonable inferences in favor of the party who prevailed in the trial court." (*Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 659 (*Barber*)).

#### B. Analysis

The parties presented conflicting evidence on the circumstances surrounding Watson's termination. Harper testified that Watson was terminated for making false statements during a theft investigation and for directly violating an order from her and the firm administrator to not be in the building past the core business hours of 6:00 a.m. to 6:00 p.m. Harper stated that a review of the building security tapes and log records proved that Watson lied about the former employee being on the premises. She and Patten counseled Watson on April 7 during the theft investigation about not staying past her core hours; however, that evening Watson stayed late without permission. Patten confirmed that she and Harper instructed Watson that Watson could not be on the

premises after the core business hours of 6:00 a.m. to 6:00 p.m. On April 8, Harper and Patten terminated Watson's employment because she had stayed late without permission.

Watson testified that she learned of a possible break-in involving the removal of a keyboard and mouse. Watson later admitted that she had taken the items and exchanged her old keyboard and mouse. She also claimed that Melissa Armstrong, her supervising attorney, had told her to tell Harper that Watson had let the former employee inside the building. Watson claimed she did not have a problem making this false statement because she had not actually let the former employee into the building and did not know that the issue would blow up.

At the April 7 meeting, Watson claimed she was told that she had made a bad decision, that she would be placed on probation, which included no overtime, but "[a]bsolutely no mention was ever made that I could not stay in the building." Watson denied being instructed that she could not stay on the premises after 6:00 p.m.

Watson claimed that another secretary insisted that Watson stay late that evening, that she stayed while the other person finished a project and they both left at about 6:30 p.m. Watson asserted that she had retracted her statement that she had let a former employee into the building when her employer mentioned bringing in the police. Watson admitted that she had never previously told her employer that Melissa had instructed her to claim that she had let a former employee into the building.

In rendering its decision, the trial court presumably believed Harper's and Patten's testimony that they had instructed Watson that she could not be on the premises past 6:00 p.m. Watson then admitted that she stayed until 6:30 p.m. the evening that Harper and

Patten claimed to have told her to not stay past 6:00 p.m. Watson also admitted that she had lied about letting a former employee into the building.

This evidence amply supported the trial court's implied decision that Watson had committed misconduct under section 1256 and its conclusion to deny the petition for writ of administrative mandate. Watson is essentially asking this court to reweigh the evidence and reach factual conclusions different from the trial court. We have no power to do so. (*Barber, supra*, 45 Cal.App.4th at p. 659.) Accordingly, we affirm the judgment.

#### DISPOSITION

The judgment is affirmed. Plaintiff shall bear her own costs on appeal.

McINTYRE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

AARON, J.