

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2020-CC-01074-COA

QUENTIN MAYES

APPELLANT

v.

**MISSISSIPPI DEPARTMENT OF
EMPLOYMENT SECURITY**

APPELLEE

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| DATE OF JUDGMENT: | 09/14/2020 |
| TRIAL JUDGE: | HON. DAVID ANTHONY CHANDLER |
| COURT FROM WHICH APPEALED: | HINDS COUNTY CIRCUIT COURT, FIRST JUDICIAL DISTRICT |
| ATTORNEY FOR APPELLANT: | QUENTIN MAYES (PRO SE) |
| ATTORNEY FOR APPELLEE: | ALBERT B. WHITE |
| NATURE OF THE CASE: | CIVIL - STATE BOARDS AND AGENCIES |
| DISPOSITION: | AFFIRMED - 07/20/2021 |
| MOTION FOR REHEARING FILED: | |
| MANDATE ISSUED: | |

BEFORE WILSON, P.J., McCARTY AND SMITH, JJ.

McCARTY, J., FOR THE COURT:

¶1. A hotel employee was fired for using vulgar and threatening language toward a colleague. The Mississippi Department of Employment Security (MDES) determined that the employee had committed misconduct and was therefore disqualified from receiving unemployment benefits. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. Quentin Mayes worked as an engineer for the Jackson Marriott and its management company. On the weekend of his wedding anniversary, Mayes rented a room at the hotel for himself and his wife.

¶3. Mayes requested a late checkout time for Sunday afternoon. After lunch but prior to their extended checkout time, the couple returned to their room to find a housekeeper in the process of cleaning it. Mayes noticed that the housekeeper—unaware of the late checkout—had removed his personal items. He then became angry and confronted her. The housekeeper reported the incident, and Mayes was terminated following an investigation by the hotel manager.

¶4. MDES denied Mayes unemployment benefits on the basis that he had been fired for work-related misconduct. An administrative law judge conducted a telephonic hearing in which he heard testimony from Mayes and the hotel manager.

¶5. The manager testified regarding his investigation and the subsequent decision to fire Mayes. He recalled that when he questioned Mayes the day after the incident, Mayes admitted to having used vulgar and inappropriate language toward the housekeeper. During his inquiry, the manager spoke individually with and collected statements from Mayes, the housekeeper, and another employee who witnessed the conversation in question. When asked by the judge to clarify whether Mayes had used profanity, the manager responded, “Yes, sir.” He explained that Mayes “work[ed] directly with housekeeping” and that “it became an issue where [the housekeeper] felt very uncomfortable about working with him after that[.]”

¶6. The manager consulted with the human resources department, and Mayes was ultimately fired for violating the hotel’s employment policy, which stated that “[a]ny

language or conduct which has the purpose of threatening or intimidating a fellow associate or guest or causes a fellow associate or guest to have concern about personal and/or physical safety” and “failure to act with respect” were grounds for termination.

¶7. In his testimony, Mayes denied using vulgar or threatening language toward his coworker. He claimed that he told the housekeeper, “[Y]’all are bogus for doing that.”

¶8. Based on the record and testimony, the administrative law judge determined that Mayes’ behavior amounted to misconduct, which disqualified him from receiving unemployment benefits. The Board of Review adopted and affirmed the decision to deny benefits. Mayes appealed to the Hinds County Circuit Court, which also affirmed the decision.

DISCUSSION

¶9. “[T]he findings of the Board of Review as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive[.]” Miss. Code Ann. § 71-5-531 (Supp. 2012). Our review on appeal is “confined to questions of law.” *Id.*

¶10. We will affirm unless the decision “(1) is not supported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the scope or power granted to the agency, or (4) violates . . . constitutional rights.” *Jackson Cnty. Bd. of Sup’rs v. Miss. Emp. Sec. Comm’n*, 129 So. 3d 178, 183 (¶14) (Miss. 2013) (quoting *Sprouse v. Miss. Emp. Sec. Comm’n*, 639 So. 2d 901, 902 (Miss. 1994)).

¶11. A person may not receive unemployment benefits if “he was discharged for

misconduct connected with his work[.]” Miss. Code Ann. § 71-5-513(A)(1)(b) (Supp. 2012).

The Mississippi Supreme Court has defined “misconduct” as

. . . conduct evincing such willful and wanton disregard of the employer’s interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee. Also, carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability, wrongful intent or evil design, and showing an intentional or substantial disregard of the employer’s interest or of the employee’s duties and obligations to his employer, came within the term.

Wheeler v. Arriola, 408 So. 2d 1381, 1383 (Miss. 1982).

¶12. In part, Mayes argues that the behavior for which he was fired did not constitute misconduct because he was a hotel guest at the time the incident occurred. However, misconduct can occur even when an employee is off-duty and off-premises. *See Johnson v. Miss. Emp. Sec. Comm’n*, 761 So. 2d 861, 862, 867 (¶¶1, 22) (Miss. 2000) (holding that a nursing home employee fired for threatening a resident’s daughter while off-duty and off-premises committed misconduct and was therefore disqualified from receiving unemployment benefits). Accordingly, Mayes’ argument that he was wrongfully terminated for his behavior while being a guest at the hotel where he worked is rejected.¹

¶13. The administrative law judge and the Board of Review applied the correct standard

¹ In his brief, Mayes asks this Court to find he was “wrongfully terminated,” but “absent an employment contract expressly providing to the contrary, an employee may be discharged at the employer’s will for good reason, bad reason, or no reason at all, excepting only reasons independently declared legally impermissible.” *Estate of Turner v. Town Pharmacy & Gifts LLC*, 310 So. 3d 1229, 1234 (¶18) (Miss. Ct. App. 2021) (quoting *Harris v. Miss. Valley State Univ.*, 873 So. 2d 970, 986 (¶46) (Miss. 2004)).

regarding misconduct in this case. Given the testimony presented, we cannot find the decision was not supported by substantial evidence. Although Mayes denied using such language, the manager testified that Mayes admitted to using vulgar and profane language toward the housekeeper.² The manager further testified that the housekeeper reported feeling “uncomfortable” working with Mayes after the incident and that he used vulgar, threatening, and profane language. After considering the record and the credibility of the testimony, the administrative law judge expressly found that “the facts show that the employer discharged the claimant because he used profane or vulgar language towards a housekeeper/coworker[.]”

¶14. Mayes’ use of vulgar and threatening language toward his colleague constituted a “disregard of standards of behavior which the employer has the right to expect from his employee[.]” *Wheeler*, 408 So. 2d at 1383. Because evidence supported the finding that his behavior amounted to misconduct, we affirm that Mayes is not entitled to unemployment benefits.

¶15. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, WESTBROOKS, McDONALD, LAWRENCE, SMITH AND EMFINGER, JJ., CONCUR.

² Mayes protests that the manager of the hotel committed perjury during the hearing, which in his view invalidates the hotel’s position. Yet perjury is defined by statute and only exists when a person “wilfully and corruptly swear[s], testif[ies], or affirm[s] falsely[.]” Miss. Code Ann. § 97-9-59 (Rev. 2014). There is no proof that occurred in this case.