

Affirmed and Memorandum Opinion filed June 16, 2020.



In The

Fourteenth Court of Appeals

NO. 14-19-00367-CV

GEORGIOS ANGELIS, Appellant

V.

**TEXAS WORKFORCE COMMISSION AND BRAEMAR TECHNICAL
SERVICES, INC., Appellees**

**On Appeal from the 295th District Court
Harris County, Texas
Trial Court Cause No. 2017-78443**

M E M O R A N D U M O P I N I O N

The Texas Workforce Commission (TWC) denied Georgios Angelis's claim for unemployment benefits after he was terminated by Braemar Technical Services, Inc. (Braemar). In Angelis's action for judicial review of the TWC's decision, the trial court granted the TWC's and Braemar's joint motion for summary judgment, concluding substantial evidence supported the TWC's decision. Angelis appealed from the summary judgment. We affirm.

Background

Braemar, a marine services company, employed Angelis as a principal surveyor. Angelis was an at-will employee at all relevant times. In 2017, Angelis planned a two-week trip to New York to attend a maritime association conference. His managing director instructed him to cancel the trip so that he could focus on his backlog of work. Angelis still went to New York to attend a separate conference, but for one day only. Braemar terminated Angelis approximately one month later.

Angelis applied for unemployment benefits. The TWC determined that Angelis was disqualified from receiving benefits because its investigation found that Braemar terminated Angelis for misconduct connected to his work. Angelis appealed, and the TWC appeal tribunal affirmed the decision. The appeal tribunal found that: (1) Angelis traveled to New York “to attend to personal matters”; (2) Angelis was previously instructed not to travel to New York for a marketing event because Angelis had a backlog of client cases; (3) Braemar discovered that Angelis went to New York against orders; and (4) Braemar terminated Angelis for “insubordination and other reasons.” Applying agency precedent regarding an employee’s failure to follow instructions, the appeal tribunal concluded that Angelis’s trip to New York constituted misconduct connected with the work. Specifically:

The purpose of the managing director’s instructions was not to just prevent [Angelis] from attending the marketing event, but to allow him more time to work on the backlog of client cases. Although [Angelis] did not travel to New York to attend the marketing event, he did travel to New York for personal matters. As [Angelis] was discharged for failing to follow his immediate supervisor’s instructions, this Tribunal finds that [Angelis’s] discharge was for misconduct connected with the work under Section 207.044 of the [Texas Unemployment Compensation] Act.

Angelis exercised his right of further appeal to the TWC. Upon considering the appeal and the complete record, the TWC affirmed the appeal tribunal's decision and adopted the tribunal's findings and conclusions.

Angelis then filed a lawsuit seeking judicial review of the TWC's decision. The TWC and Braemar moved for summary judgment, contending substantial evidence supported the TWC's decision. The trial court granted the motion. This appeal followed.

Analysis

A. Standard of review

We review the TWC's decision on unemployment benefits de novo to determine whether substantial evidence supports the ruling. *See* Tex. Lab. Code § 212.202(a); *McCrory v. Henderson*, 431 S.W.3d 140, 142 (Tex. App.—Houston [14th Dist.] 2013, no pet.). The TWC's action is presumed valid, and the party seeking to set aside the decision has the burden of showing it was not supported by substantial evidence. *Collingsworth Gen. Hosp. v. Hunnicutt*, 988 S.W.2d 706, 708 (Tex. 1998). Substantial evidence is more than a mere scintilla and need not be a preponderance. *McCrory*, 431 S.W.3d at 142-43. In fact, the evidence may preponderate against the agency's decision and still amount to substantial evidence. *Dozier v. Tex. Emp't Comm'n*, 41 S.W.3d 304, 309 (Tex. App.—Houston [14th Dist.] 2001, no pet.). Whether substantial evidence supports an administrative decision is a question of law. *Tex. Dep't of Pub. Safety v. Alford*, 209 S.W.3d 101, 103 (Tex. 2006).

In the court of appeals, the issue is whether the evidence introduced in the trial court shows facts in existence at the time of the TWC's decision that reasonably support the decision. *Collingsworth*, 988 S.W.2d at 708. We may not substitute our judgment for that of the TWC on controverted issues of fact. *McCrory*, 431 S.W.3d

at 143. The TWC's decision may be set aside only if it was made without regard to the law or the facts and, as a result, was unreasonable, arbitrary, or capricious. *See Collingsworth*, 988 S.W.2d at 708.

The reviewing court must look to the evidence presented in the trial court and not the record created by that agency. *Mercer v. Ross*, 701 S.W.2d 830, 831 (Tex. 1986). Individual items within the agency record may be introduced at trial, but they must be introduced independently and pursuant to the rules of evidence. *See Nuernberg v. Tex. Emp't Comm'n*, 858 S.W.2d 364, 365 (Tex. 1993). We review the trial court's judgment by comparing the TWC's decision with the evidence presented to the trial court and the governing law. *McCrorry*, 431 S.W.3d at 143. We determine whether the summary judgment evidence established as a matter of law that substantial evidence supported the TWC's decision. *Id.*

B. Misconduct

An individual is disqualified from receiving unemployment benefits if the individual was discharged for misconduct connected with the individual's last work. Tex. Lab. Code § 207.044(a). "Misconduct" means mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure the orderly work and the safety of employees. *Id.* § 201.012(a). Conduct constituting good cause for termination does not necessarily constitute misconduct under section 201.012(a) that would disqualify a person from obtaining unemployment benefits. *See Santillan v. Wal-Mart Stores, Inc.*, 203 S.W.3d 502, 507 (Tex. App.—El Paso 2006, pet. denied).

C. Substantial evidence supports the TWC's decision

The evidence presented in the trial court shows the following. Angelis was scheduled to travel to New York for nearly two weeks to attend an industry

conference. Braemar describes the trip as a “marketing trip.” Shortly before Angelis was due to leave for New York, John Walker, a managing director at Braemar, instructed Angelis to “cancel his impending marketing trip to New York” so Angelis could “focus on his backlog of work.” Walker says Angelis told him he cancelled his trip. In fact, Angelis traveled to New York, but only for one day, and for a different event than the maritime conference, so he could meet with existing Braemar clients. Angelis contends he went to New York despite his supervisor’s instructions because he “was not told not to work.” Walker eventually learned of Angelis’s trip, but the parties dispute whether he learned before or after Angelis was terminated. By travelling to New York after being instructed not to do so, Walker says, Angelis “neglect[ed] his work and violat[ed] direct orders.” Braemar terminated Angelis on May 1, 2017 “[a]s a result of [Angelis’s] actions.” This evidence satisfies the substantial-evidence standard to support the TWC’s decision.

On appeal, Angelis devotes much of his brief to the proposition that he was fired without cause and that Braemar breached his employment contract by failing to follow its termination procedures. Both of those issues, however, are beyond the scope of this appeal: whether the TWC’s decision regarding unemployment benefits is supported by substantial evidence. *See Santillan*, 203 S.W.3d at 507.

Angelis does not dispute that he went to New York after being instructed not to go, and he does not contest that an employee’s failure to follow instructions is misconduct. Rather, he contends he did not technically fail to follow Walker’s instruction. Angelis suggests the TWC would have ruled for him had it properly weighed the evidence. Specifically, he alleges the TWC disregarded his own detailed affidavit testimony in favor of the conclusory statements in Walker’s

affidavit,¹ and ignored the travel documents showing he changed his New York trip from two weeks to one day. He also faults Braemar for presenting an incomplete record to the trial court by omitting his affidavit and its exhibits.

As is clear from the decision, the TWC considered, but rejected, Angelis's argument that his one-day trip to New York did not technically violate Walker's instruction. As the primary fact-finder, the administrative agency's function is to resolve conflicts in evidence, and it is the aim of the substantial-evidence rule to protect that function. *Kaup v. Tex. Workforce Comm'n*, 456 S.W.3d 289, 294-95 (Tex. App.—Houston [1st Dist.] 2014, no pet.). This court's task is not to reweigh the evidence, but to determine whether the trial court was presented with substantial evidence to support the TWC's decision. The trial court had Angelis's affidavit and travel documents before it because Angelis attached them to his response to the motion for summary judgment. There is no indication the trial court did not consider that evidence. Even if the trial court believed Angelis's affidavit raised a genuine issue of material fact, which is the usual standard to avoid summary judgment, the trial court was required to grant summary judgment unless Angelis proved the TWC's decision was not supported by substantial evidence. We conclude Angelis did not satisfy that burden. The trial court properly granted summary judgment.

¹ Angelis complains that Walker's 2018 affidavit cannot support the TWC's 2017 decision because it did not exist when the decision was made, though he does not explain why his own 2019 affidavit does not suffer from the same problem. When the affidavit was executed is immaterial; the question is whether there were facts in existence at the time of the TWC's decision to justify its decision. *Collingsworth*, 988 S.W.2d at 708. Angelis does not contend that the admissible facts alleged in Walker's affidavit, which are consistent with the TWC's decision, did not exist at the time the TWC made its decision.

We overrule Angelis's sole issue and affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Justices Christopher, Jewell, and Hassan.