Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-353

JULY TERM, 2019

Michael Deuso* v. Department of Labor (Shelburne Limestone Corporation)	}	APPEALED FROM:
	}	Employment Security Board
	}	DOCKET NO. 06-18-001-12

In the above-entitled cause, the Clerk will enter:

Claimant appeals from the Employment Security Board's decision to disqualify him from receiving unemployment benefits for a period of ten weeks because he was fired for misconduct connected with his work. We affirm.

We review this case a second time. The first time, a panel of this Court reversed the Board's determination that claimant had left his employment voluntarily without good cause attributable to his employer. Deuso v. Dep't of Labor, No. 2017-425, 2018 WL 2100366 (Vt. May 4, 2018) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo17-425.pdf. We remanded the matter to give the parties an opportunity to address whether claimant was discharged for engaging in misconduct connected to this work. Id. at *3. On remand, both the administrative law judge and the Board concluded that he was. Claimant appeals that determination.

The facts are not in dispute. Claimant was employed by Shelburne Limestone Corporation for approximately thirty-five years, most recently as a plant manager of the company's Swanton quarry. The employer's president and its former president, the current president's father, spent five or six hours on April 17, 2017 adjusting the feeder control settings at the Swanton quarry to test whether the system could run at 100% capacity. After making the adjustments, the current and former presidents instructed claimant to leave the settings at 100% and to contact them if he had any issues with the settings. Two days later, the former president noticed that the settings had been reduced to 80% capacity. Claimant admitted that he had changed the settings because he did not think that the equipment could run at 100% capacity. Before changing the settings, claimant had not contacted either the current or former president to express his concerns, as he had been instructed, or to inform them that he intended to change the settings. After the former president told him to put the settings back to 100% capacity, he did so in a manner that the employer considered to be disrespectful.

As a result of the incident, claimant was told to report for a meeting at the corporate offices on April 21, 2017. The current and former president intended to fire claimant at the meeting if the parties were unable to agree on a path to move forward. At the outset of the meeting, claimant asked if the meeting was about the quarry or him. When told it was about him, claimant yelled an obscenity and stormed out of the meeting. Claimant's employment was subsequently terminated.

A person discharged for "misconduct connected with his or her work" is temporarily disqualified from obtaining unemployment benefits. 21 V.S.A. § 1344(a)(1)(A). In this case, the Board concluded that claimant had engaged in misconduct by willfully disobeying a direct order to keep the settings at 100% and to contact the employer if he had any concerns. According to the Board, the claimant's conduct was willful and done in disregard of the employer's business interests. The Board found credible testimony indicating that the employer wanted the settings changed to maximize the efficiency of the Swanton plant's operations so that the plant could remain competitive.

"This Court has defined misconduct sufficient to constitute disqualification under § 1344[(a)(1)(A)] as substantial disregard of the employer's interest, either willful or culpably negligent." Allen-Pentkowski v. Dep't of Labor, 2011 VT 71, ¶ 6, 190 Vt. 556 (quotation omitted). "Mere mistakes, errors in judgment, unintentional carelessness or negligence are not acts of misconduct sufficient to disqualify a claimant for unemployment benefits, though they may very well be acts of misconduct warranting discharge of the employee." Porter v. Dep't of Emp't Sec., 139 Vt. 405, 411 (1981). "The burden of proof is on the employer to establish misconduct." Mazut v. Dep't of Emp't & Training, 151 Vt. 539, 541 (1989). "Weight, credibility and persuasive effect are for the trier of fact." Kasnowski v. Dep't of Emp't Sec.,137 Vt. 380, 381 (1979). "This Court will not disturb the Board's findings if there is any credible evidence to support them even when substantial evidence to the contrary exists." Favreau v. Dep't of Emp't & Training, 151 Vt. 170, 173 (1989). In reviewing a Board's decision, we presume that a decision made within its expertise is "correct, valid, and reasonable." Kelley v. Dep't of Labor, 2014 VT 74, ¶ 6, 197 Vt. 155 (quotation omitted). "In general, we also defer to the Board's interpretation of the statutes it is charged with administering." Id. Nonetheless, Vermont's "Unemployment Compensation Act is a remedial law designed to remove economic disabilities and distress resulting from involuntary unemployment," and thus "no claimant should be excluded unless the law clearly intends such an exclusion." Id. ¶ 8 (quotations omitted).

Upon review of the record, and applying this standard of review, we discern no basis to overturn the Board's decision to disqualify claimant from benefits for ten weeks based on its conclusion that claimant was discharged for willful misconduct in substantial disregard of the employer's business interests. The employer's president testified that the company decided to change the settings to evaluate whether the crushers could perform at maximum capacity and produce more tons of stone per hour. The president also testified that maximizing the settings increased production from 200 to 350 tons per hour on average. According to the president, he explained to claimant that it was crucial to leave the settings as they had been changed to determine if there was a weak spot in the system that prevented it from running at full capacity. Thus, the president told claimant to leave the settings as changed and to report to the president or his father if he had any issues with the changes. Nevertheless, claimant changed the settings without

informing the employer he was doing so or reporting any issues that had arisen, in direct violation of what he had been told to do.[*] This testimony supported the Board's determination that claimant's conduct was willful and in substantial disregard of the employer's business interests.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

[*] At the hearing, claimant emphasized his concern that running the system at the 100% setting would cause it to shut down, creating greater burdens on the company and his crew, and possibly even fire dangers. Even if claimant's concerns were well founded, the Board could reasonably conclude on this record that he deliberately changed the setting after his employer specifically told him not to, and without consulting with his employer about the fact that he was doing so. The Board could reasonably conclude that his acts constituted misconduct for the purpose of 21 V.S.A. § 1344(a)(1)(A).