

IN THE UTAH COURT OF APPEALS

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Michael D. Montoya,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Petitioner,)		
)	Case No. 20080865-CA	
v.)		
)	F I L E D	
Department of Workforce)	(January 8, 2009)	
Services and Kennecott Utah)		
Copper Corporation,)	<table border="1"><tr><td>2009 UT App 9</td></tr></table>	2009 UT App 9
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Respondents.)		

Original Proceeding in this Court

Attorneys: Michael D. Montoya, West Valley City, Petitioner Pro
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Geoffrey T. Landward, Paul C. Burke, and Liesel B.
Stevens, Salt Lake City, for Respondents

Before Judges Thorne, Bench, and McHugh.

PER CURIAM:

Petitioner Michael D. Montoya seeks judicial review of the decision of the Workforce Appeals Board denying unemployment compensation benefits on grounds that he was terminated for just cause. We reverse an administrative agency's findings of fact "only if the findings are not supported by substantial evidence." Drake v. Industrial Comm'n, 939 P.2d 177, 181 (Utah 1997). We will not disturb the Board's conclusion regarding the application of law to facts unless it "exceeds the bounds of reasonableness and rationality." Nelson v. Department of Employment Sec., 801 P.2d 158, 161 (Utah Ct. App. 1990).

The Board's findings of fact are supported by substantial evidence in the record. There was little dispute as to the core facts. Montoya backed the drill he was operating into his truck, although he was not aware of having done so at the time. After discovering that a live cable carrying 4200 volts of electricity was laying on the truck, Montoya got into the truck and moved it,

changing its position in an attempt to conceal the facts of the accident. Montoya knew that the safety protocol required him to immediately contact his supervisor and arrange for the electricity to be shut off before moving the truck. His actions posed a significant risk that he would be injured or killed. Montoya initially did not reveal that he had moved the truck from under a live cable. However, when confronted with the discrepancies between his version and the physical evidence, Montoya attempted to negotiate his discipline by offering to admit that he hit the truck with the drill if his supervisor and the operations superintendent would omit from their reports that he had moved the truck from under the cable. Montoya did not dispute that he knew the safety protocol or that it was within his control to follow it. Thus, the elements of "knowledge" and "control" were established without dispute. The only dispute before the agency and this court concerns the Board's determination that culpability was also established.

We review the Board's conclusion that culpability was established for reasonableness and rationality. See Nelson, 801 P.2d at 161. The Board's conclusion is amply supported by the evidence. Montoya's actions were a serious breach of the safety protocol. The crux of the Board's decision, however, was based upon Montoya's actions after the accident that were intended to conceal the facts. Only after being confronted with physical evidence that would contradict his version of the facts did Montoya admit what had actually happened. The Board was clearly concerned by Montoya's efforts to conceal the facts to avoid discipline. Accordingly, a majority of the Board concluded that although the "conduct may have been isolated, it is so serious in nature as to irreparably harm the Employer's ability to trust the Claimant not only with his equipment, but with his own safety and the safety of his coworkers." On that basis, the Board reasonably concluded that culpability was established.

Montoya claims that the element of knowledge was not established because there is a disparity between the discipline Montoya received and the discipline that other employees have received. Therefore, Montoya asserts that he would not have known that he would be terminated based on his actions. However, this is not the relevant inquiry. Montoya did not, and does not, dispute that he had knowledge of the safety protocol and that he failed to follow it. These facts satisfied the knowledge element. Montoya's assertion that there was minimal damage to the truck is also not relevant to the Board's conclusion that Montoya's conduct was culpable. Damage to the vehicle was not a significant consideration.

Accordingly, we affirm the decision of the Board to deny unemployment compensation benefits.

William A. Thorne Jr.,
Associate Presiding Judge

Russell W. Bench, Judge

Carolyn B. McHugh, Judge