FILED
JUN 26 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES L. LaGRANGE,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF JOB SERVICE and FOWLER REFRIGERATION,

Respondents-Appellees.

Filed June 26, 1984

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4-209
83-1081

Appeal from the Iowa District Court for Johnson County - L. Vern Robinson, Judge.

Petitioner appeals from the district court's ruling affirming respondent agency's decision denying petitioner unemployment benefits. AFFIRMED.

Philip Mears of Mears, Zimmerman & Mears, Iowa City, for petitioner-appellant.

Walter F. Maley, Blair H. Dewey, and Joseph L. Bervid, Des Moines, for respondents-appellees.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

Petitioner appeals from the district court's ruling affirming respondent agency's decision denying petitioner unemployment benefits. Petitioner claims that the trial court erred in concluding that there was sufficient evidence to support the agency's finding that petitioner voluntarily quit his job and in refusing to consider whether his voluntary election to terminate his employment was for good cause attributed to his employer and did not bar his eligibility for unemployment compensation. We affirm.

Petitioner was employed by Fowler Refrigeration from July, 1981, to April, 1982. The business was owned by Terry Fowler and his brother, Charles Fowler. Petitioner had a drinking problem which according to the owners was adversely affecting his job performance. Petitioner and the owners agreed that he would seek help from an alcoholism counselor. As part of his treatment an antabuse program was commenced. Although the program required that he take the drug every day, petitioner indicated that he would not take it during the weekends so that he could drink. He informed Terry Fowler that he was not going to take antabuse during the weekend. Fowler contacted petitioner's counselor and informed him that petitioner had to take the antabuse constantly. Terry Fowler indicated at a hearing on petitioner's request for unemployment benefits that it was his intention at the time to terminate petitioner's employment if he took one more drink. The counselor informed petitioner that his plan not to take antabuse during the weekends was unacceptable to the employers.

On April 2, 1982, petitioner went to a bar, knowing that Terry Fowler would be present. He bought Fowler a drink and a beer for himself. He drank the beer in front of Fowler. Petitioner thought he had been fired then although no words were exchanged. Fowler indicated that it was his intention to fire petitioner after the incident; however, he indicated at the hearing that no decision was made at that time. Both Terry and Charles Fowler indicated that petitioner was fired

after he did not report to work for a week after the April 2 incident.

A claims deputy denied petitioner's claim for unemployment benefits on May 14, 1982. Petitioner requested a hearing after which the hearing officer determined that petitioner had voluntarily quit his employment without good cause attributed to his employer. The agency's appeal board upheld the decision of the hearing officer.

Petitioner filed a petition for judicial review of the agency's decision. On April 6, 1983, the district court entered an order remanding the case to the agency for a specific finding of fact relating to when petitioner was terminated from his employment. A hearing officer determined that petitioner's employment was terminated when he did not appear for work for approximately one week and that he had voluntarily left his employment. On May 25, 1983, the appeal board affirmed the decision. On July 20, 1983, the district court entered an order determining that the petitioner was not entitled to unemployment benefits. The court determined that there was substantial evidence to support the agency's finding that petitioner was terminated when he voluntarily left his employment and did not appear for work for a week. This appeal followed.

I.

We have previously summarized the relevant principles of our review of a claim for unemployment benefits as follows:

> Judicial review of administrative agency action is limited by Iowa Code § 17A.19(8). We are bound by Job Service's findings of fact if they are supported by substantial evidence. Evidence is substantial if a reasonable mind could accept it as sufficient to reach the same findings. The fact that a different conclusion could also have been reached is irrelevant. The court is not, however, bound by the agency's legal conclusions; it can correct misapplications of the law.

Quenot v. Iowa Department of Job Service, 339 N.W.2d 624, 626 (Iowa Ct. App. 1983) (citations omitted). In this case, petitioner was denied benefits under Iowa Code section 96.5(1) which disqualifies a person "[i]f he or she has left his or her

work voluntarily without good cause attributable to his or her employer, if so found by the department." Thus, in order to be disqualified from receiving benefits, it must be shown that petitioner left his job voluntarily as opposed to being discharged by his employer and that such voluntary leaving was without good cause attributable to his employer.

Upon reviewing the record under the above standard, we agree with the district court that there is substantial evidence to support the agency's finding that petitioner voluntarily left his job and that he did so when he did not show up for work for a week after the April 2 drinking incident. We adopt as our own the following language from the agency's findings of fact:

> On the evening of April 2, 1982, the claimant was at a tavern. The employer was also present at this tavern. The claimant, in what apparently appears to be an act of defiance, bought the employer an alcoholic beverage. The claimant then assumed that his employment was terminated because of what the alcoholic counselor had told him. The employer never made any mention that the claimant was being terminated. While it is possible that the claimant might have been terminated because of this incident, the record also shows that it is possible that the employer would have allowed the claimant to remain in his employment if he had appeared for work and discussed the matter. Rather than appearing for work, the claimant simply assumed that his employment was terminated and never had any contact with the employer for approximately one week.

The fact that petitioner testified before the agency that he assumed he was discharged does not mean that the findings quoted above are not supported by substantial evidence in the record. Quenot, 339 N.W.2d at 626.

II.

We also concur in the agency's conclusion that petitioner's voluntary quit was without good cause attributable to his employer.[1] The record is clear that

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[1] Although the district court did not specifically address this issue, our review thereof is not hindered since the hearing officer did conclude that petitioner's leaving his job was without good cause and it is the record made before the hearing officer that we examine. See Cook v. Iowa Department of Job Service, 299 N.W.2d 698, 701 (Iowa 1980).

petitioner had a drinking problem, that his employer recognized the problem and tried to help him deal with it, and that petitioner simply wanted to continue drinking. He had an agreement with his employer that he would see Dan Reece, an alcoholism counsel with an organization known as MECCA. Under this arrangement, petitioner was to take antabuse which appeared to control his drinking. He later decided, however, that he enjoyed drinking too much and decided to quit taking the antabuse. He was aware from conversations with Reece that his employer wanted him to take antabuse at all times and that any further drinking on his part, either during the week or on the weekend, could lead to his termination from employment. Petitioner deliberately violated the terms of this agreement on April 2 when he drank a beer in front of his employer. He then failed to come to work during the following week after which he was in fact discharged. Thus, petitioner's unemployment resulted from his mistaken assumption that he was fired right away on April 2 and subsequent failure to show up for work, but even more so from his failure to follow through with his agreement with his employer to attempt to come to grips with his drinking problem. Under those circumstances, we conclude with the agency that petitioner's voluntary quit was without good cause attributable to the employer.

The decision of the district court is affirmed.

AFFIRMED.