IN THE COURT OF APPEALS OF IOWA

No. 1-296 / 00-1434
Filed September 12, 2001

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CLERK SUPREME COURT

DANA DELAIR,
Appellant,

vs.

EMPLOYMENT APPEAL BOARD OF THE DEPARTMENT OF INSPECTION AND APPEALS,
Appellee,

and

GERKIN WINDOWS AND DOOR,
Respondent.

Appeal from the Iowa District Court for Woodbury County, Robert C. Clem, Judge.

The petitioner appeals the district court's ruling on judicial review that affirmed the respondent board's denial of his claim for unemployment benefits.

AFFIRMED.

Roger L. Carter of Carter Law Firm, Sioux City, for appellant.

Richard R. Ramsey, Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Danne Delair appeals the district court judgment upholding the Employment Appeal Board's denial of his claim for unemployment benefits. Because the agency decision was supported by substantial evidence, we affirm the district court.

Background Facts and Proceedings. Danne Delair was hired by Gerkin Windows and Doors to perform a job known as "boxing up doors." The job required Delair to lift the doors off the assembly line and then carry and stack them. Delair contended that prior to being hired, he informed Gerkin he had been in an accident, and as a result had a weight restriction that prohibited constant lifting in excess of forty to sixty pounds.[1] Gerkin's employees testified they were told of the accident, but did not recall Delair ever mentioning a weight restriction. Although he had not weighed the doors, Delair believed many exceeded sixty pounds, and stated he "was told" that some doors weighed up to one hundred pounds. Gerkin asserted that most of its doors were in the thirty-seven to forty pound range, with a small number weighing sixty pounds. It denied producing heavier doors.

Less than two weeks after being hired, while performing his job duties, Delair felt something snap in his neck. He reported the injury to a supervisor, then left to seek medical attention. Delair was seen by a nurse practitioner, who gave Delair an excuse for missing two days of work, but did not place any restrictions on the work he could perform once he returned to Gerkin. In her

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[1] The accident referred to by Delair was a car accident occurring in the 1980s, which resulted in a broken neck.

progress notes the nurse practitioner recorded the following: "Note given to be off work today and tomorrow. Talked with him perhaps needing to consider finding other work with the physical demands of his current position. While he acknowledges this, he is unsure of what he might do."

After Delair returned to work, following the two excused days, he informed Gerkin he would have to quit his job if he was required to continue lifting heavy doors. There is conflicting evidence as to whether Gerkin was informed of the contents of the nurse practitioner's notes. Delair was then placed in a different position where no heavy lifting would be required. Delair put in a full day at the new position, but early in his shift on the second day, the absence of other employees prompted Gerkin to return Delair to his former duties. Delair did not object to being returned to a heavy-lifting task, and performed his old job, without complaint, for about an hour. He then informed his supervisors he was physically unable to execute the current job tasks, and quit.

Delair filed a claim for unemployment compensation, but was found to be ineligible for benefits by a representative of Iowa Workforce Development. He appealed this decision to Iowa Workforce Development's Unemployment Insurance Appeals Section, which affirmed the ineligibility determination on the basis Delair had voluntarily quit his employment without good cause attributable to the employer. After the Employment Appeal Board also affirmed the benefits denial, Delair filed a petition for judicial review with the district court. When the district court found substantial evidence in the record to support the agency finding, Delair filed this appeal.

Scope of Review. When a district court renders a decision pursuant to Iowa Code section 17A.19, review is limited to correcting errors at law. *See Aluminum Co. of America v. Musal,* 622 N.W.2d 476, 478 (Iowa 2001). A party challenging agency action bears the burden of demonstrating the action's invalidity and resulting prejudice. Iowa Code § 17A.19(8)(a) (West Supp. 1999). This can be shown in a number of ways, including proof that the action was ultra vires, unconstitutional, legally erroneous, arbitrary or capricious. *See generally* Iowa Code § 17A.19(10) (West Supp. 1999). A party can also successfully challenge an agency action by demonstrating the action was unsupported by substantial evidence in the record, when that record is viewed as a whole. Iowa Code § 17A.19(10)(f) (West Supp. 1999). *See also Koehler Elec. v. Wills*, 608 N.W.2d 1, 3 (Iowa 2000). Substantial evidence is that which would allow a reasonable mind to reach the same conclusion as the decision maker. *See Koehler*, 608 N.W.2d at 3.

Good Cause. A worker is not eligible for unemployment benefits if he or she voluntarily quits without good cause attributable to the employer. Iowa Code § 96.5(1) (1999). When a worker quits due to illness, that quit is attributable to the employer if the illness is aggravated by work conditions. *See White v. Employment Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992). However, the worker must

> present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated.

Iowa Admin. Code r. 871-24.26(6)(b).

As noted by the Iowa Supreme Court in *Suluki v. Employment Appeal Bd.*:

> We think it is logical, reasonable, fair, and practical to require – as a condition of entitlement to unemployment benefits – an employee to give an employer notice of work-related health problems before quitting. Such a requirement would enable an employer to correct the working conditions causing the problem or provide the employee with different job duties. Then if the employer does not correct the problem or otherwise reasonably accommodate the employee, the employee would have good cause to quit. Such a requirement could result in eliminating the need for the employee to seek unemployment compensation benefits in the first place.

Suluki v. Employment Appeal Bd., 503 N.W.2d 402, 405 (Iowa 1993).

This notice requirement is not satisfied by "preliminary understandings" about a work restriction discussed at the time the worker is hired. *See Cobb v. Employment Appeal Bd.*, 506 N.W.2d 445, 448 (Iowa 1993). Rather, it is incumbent upon the employee to remind the employer, at the time a task is assigned, that a restriction is being violated. *See id.* Notice given at the time of the quit is notice "after the fact," because it does not allow the employer an opportunity to resolve the problem. *Id.*

When applying these standards to the agency record, there is substantial evidence to support a finding Delair voluntarily quit without good cause attributable to his employer. While the record indicates his job duties did aggravate his preexisting neck and back problem, nothing outside of Delair's own testimony affirmatively demonstrated that this problem compelled or required him to quit his job. The nurse practitioner's notes stated only that she told him he should consider finding a less demanding job. The agency was free to interpret these notes as amounting to something less than a medical direction to quit

employment, particularly in light of the fact the nurse practitioner did not find it necessary to place any medical restriction on Delair's return to work.

Similarly, the record sufficiently indicates that Delair failed to provide Gerkin with adequate notice of his intent to quit. Even if the agency believed Delair's testimony that Gerkin was on notice of his weight restrictions at the time of hire, and that his position did require him to lift amounts in excess of the restriction, under *Cobb* such information does not satisfy the notice requirement. *Cobb*, 506 N.W.2d at 448. Although Delair did tell his employer, upon his return to work, that he would quit if he was required to do heavy lifting, he did not protest when the employer returned him to his old duties. Nor did he, after discovering that his old job was now physically difficult, remind the employer of his prior statement and allow Gerkin an opportunity to provide a light-duty accommodation.

An employer must be allowed an opportunity to provide reasonable accommodations, after receiving notice. *See Suluki*, 503 N.W.2d at 405. If an employee chooses to silently endure an inappropriate or physically aggravating job assignment, he cannot rely on prior notifications to satisfy his notice obligation. *See Cobb*, 506 N.W.2d at 448. Here, the time between Delair's first notice of intent to quit and his actual resignation was punctuated by a heavy-lifting assignment to which he raised neither protest nor complaint. His second notice of intent to quit, occurring contemporaneously with his resignation, did not allow Gerkin an opportunity to make a reasonable accommodation. *See id.*

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Given all the foregoing, the evidence substantially supports the agency determination of voluntary quit without good cause attributable to the employer. The agency decision was not in any other manner arbitrary, capricious, the result of a misapplication of law, or violative of agency rule or procedure. We therefore affirm the decision of the district court.

AFFIRMED.