

IN THE COURT OF APPEALS OF IOWA

No. 2-425 / 92-0128

LOUGHLIN LAW FIRM,
by JOHN D. LOUGHLIN,

Petitioner-Appellee,

vs.

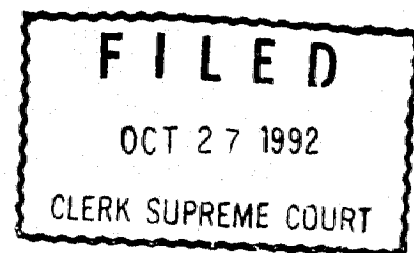
OKSANA H. THORNLEY,

Respondent,

and

EMPLOYMENT APPEAL BOARD,

Respondent-Appellant.



Appeal from the Iowa District Court for Cherokee
County, James L. MacDonald, Judge.

The Employment Appeal Board and Oksana Thornley appeal
a district court order reversing the board's decision and
denying Thornley unemployment benefits. **REVERSED.**

William C. Whitten and Joe E. Smith, Des Moines, for
appellants.

John D. Loughlin of Loughlin Law Firm, Cherokee, for
appellee.

Heard by Hayden, P.J., Habhab, J., and McCartney, S.J.*

*Senior Judge from the 2nd Judicial District serving on
this court by order of the Iowa Supreme Court.

PER CURIAM

This appeal concerns a claim for unemployment insurance benefits. A Claims Deputy found the claimant was disqualified from receipt of unemployment insurance benefits because she was still employed in a part-time job under the same conditions as her original contract of hire. An administrative law judge reversed the decision of the Claims Deputy and found the claimant was eligible for unemployment insurance benefits for the weeks she does not work. The Employment Appeal Board affirmed the decision of the administrative law judge.

The employer then petitioned for judicial review claiming the board's decision was not supported by substantial evidence. The district court reversed the decision of the Employment Appeal Board and reinstated the decision of the Claims Deputy. The court determined the board's decision was not supported by substantial evidence. It concluded the claimant's testimony lacked credibility and her conduct disqualified her from receiving unemployment insurance benefits.

The Employment Appeal Board and Oksana Thornley appeal. We reverse and find the decision of the Employment Appeal Board is supported by substantial evidence and that the law was correctly applied.

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before

the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id. In addition, the court must broadly and liberally apply the board's findings in order to uphold, rather than defeat, the decision. Aluminum Co. of America v. Employment Appeal Bd., 449 N.W.2d 391, 394 (Iowa 1989) (citing Ward v. Department of Transp., 304 N.W.2d 236, 237-38 (Iowa 1981)).

The Employment Appeal Board and the claimant argue the district court erred in holding there was not substantial evidence to uphold the board's decision awarding the claimant unemployment benefits. We agree. We also agree with the district court that the transcript of the testimony before the Administrative Law Judge is not a model of clarity. Nonetheless, we believe the findings of the Administrative Law Judge as affirmed by the Employment Appeal Board that the claimant is totally unemployed in those weeks when she had no wages and performed no work is supported by substantial evidence.

The trial court found the bulk of the transcript is in conflict and reflects upon the credibility of the parties. The trial court also found "that the claimant's testimony lacks credibility and that her conduct, as revealed by the record, disqualifies her from receiving unemployment compensation benefits"

But, where evidence is in conflict or where reasonable minds might disagree about the conclusion to be drawn from the evidence, the court is bound to accept the board's findings. Aluminum Co. of America, 449 N.W.2d at 394 (citing Ward, 304 N.W.2d at 239). Findings of credibility are for the agency to make, and the court should not interfere with those findings. Jeun v. Iowa Dep't of Job Serv., 411 N.W.2d 433, 436-37 (Iowa App. 1987) (citations omitted). The district court, which sits in an appellate capacity in reviewing agency action, is prevented from weighing the evidence or the credibility of the witnesses. Tindell v. Apple Lines, Inc., 478 N.W.2d 428, 430 (Iowa App. 1991). In this respect, the district court exercises only appellate jurisdiction. Black v. University of Iowa, 362 N.W.2d 459, 462 (Iowa 1985).

We reverse the district court and affirm the agency's decision.

Costs of this appeal are taxed to the appellee.

REVERSED.