

IN THE COURT OF APPEALS OF IOWA

No. 8-022 / 97-0347

000097

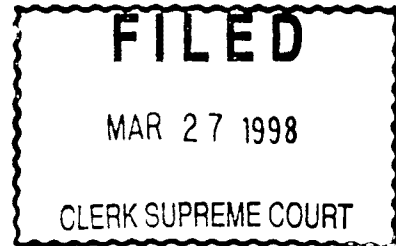
TERRI L. EPPS,

Petitioner-Appellant,

vs.

**EMPLOYMENT APPEAL BOARD and
PREMIER CASTING SERVICE,**

Respondents-Appellee.



Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Petitioner appeals from the district court's ruling on judicial review affirming the Employment Appeal Board's decision denying her unemployment benefits.

AFFIRMED.

Van T. Tran, until withdrawal, and then Cynthia A. Rybolt of Legal Services Corporation, Waterloo, for appellant.

William C. Whitten, Des Moines, for appellee board.

Chad A. Swanson of Dutton, Braun, Staack, Hellman & Iversen, P.L.C., Waterloo, for appellee employer.

Considered by Cady, C.J., and Sackett and Mahan, JJ.

MAHAN, J.

This is an appeal by an employee claiming the district court should not have affirmed the decision of the Employment Appeal Board which denied her claim for unemployment benefits. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Terri Epps worked at Premier Casting Service from September 15, 1995 to September 25, 1995. Her work caused her to be exposed to dust which aggravated a medical condition. On October 5, 1995, Epps received a medical recommendation not to return to work. The employer considered she had quit on September 25, 1995.

Epps filed a claim for unemployment benefits. After a fact-finding hearing at a local Job Service office, a representative awarded her unemployment benefits. The employer appealed to the Appeals Bureau.

Epps received a notice which stated:

Upon receipt of this notice, you must IMMEDIATELY call the Appeals Bureau in Des Moines, Iowa, to tell us the telephone number where you and your witness(es), if you have any, can be reached on the day of the hearing. UNLESS YOU DO, YOU WILL NOT BE CALLED ON THE DAY OF THE HEARING.

Epps did not call the Appeals Bureau. A hearing was held before an administrative law judge (ALJ) without her participation. The employer presented evidence Epps did not provide a medical statement prior to the time she quit. Two days after the administrative hearing, Epps called the ALJ and claimed she did not understand the instructions in the notice.

The ALJ determined Epps did not present sufficient reason to reopen the record. The ALJ also concluded Epps did not quit for good cause attributable to the employer and, thus, was not entitled to unemployment benefits. The Employment Appeal Board affirmed the decision of the ALJ.

Epps filed a petition for judicial review. The district court remanded to the board for a hearing on the issue of good cause to reopen the record. At the hearing, Epps alleged someone at the local Job Service office advised her the Appeals Bureau would be calling her. Epps testified she believed Job Service already had her number and she did not need to call prior to the administrative hearing. The board found Epps' testimony was not credible, and concluded she did not present good cause to reopen the record.

The case then returned to the district court. On judicial review, the court found the board's decision was supported by substantial evidence, and affirmed. Epps now appeals.

I. Epps contends the board abused its discretion by failing to find she had presented good cause to reopen the record. The question of good cause is a fact issue within the discretion of the board to decide. *Houlihan v. Employment Appeal Board*, 545 N.W.2d 863, 865 (Iowa 1996). The board found Epps' claims she did not understand the notice of hearing were not credible. It is the function of the agency to determine the issue of credibility, and the agency's finding should not be

overturned **unless** the agency erred. *Jeun v. Iowa Dept. of Job Service*, 411 N.W.2d 433, 436-437 (Iowa App. 1987).

We find there is substantial evidence to support the board's conclusion Epps was not credible. The notice of hearing was very clear. Epps failed to follow the instructions in the notice. We determine the board properly found she failed to present good cause to reopen the record.

II. Epps asserts the board's conclusion she voluntarily quit her employment without good cause attributable to the employer is not supported by substantial evidence. Before an employee quits, he or she must give an employer notice of work-related health problems and that the employee intends to quit unless those problems are corrected. *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993). This gives the employer a chance to reasonably accommodate the employee. *Id.* Absent such notice, the employee has left work voluntarily without good cause attributable to the employer and is not entitled to unemployment benefits. *Id.*

Here, Epps did not notify the employer of her health problems before she quit. We find there is substantial evidence to support the board's conclusion she left work voluntarily without good cause attributable to the employer.

We affirm the decision of the district court and the Employment Appeal Board.

AFFIRMED.