IN THE COURT OF APPEALS OF IOWA

No. 1998-12 (8-742) / 98-1051

MICHELLE FARR,

Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD and PATTISON BROTHERS MISSISSIPPI RIVER TERMINAL,

Respondents-Appellees.

FILED
JAN 27 1999
COURT OF APPEALS

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Petitioner appeals a district court ruling affirming the Employment Appeal Board's final ruling that petitioner voluntarily quit her employment and is ineligible for benefits. **AFFIRMED.**

Karen A. Kienast of Legal Services Corporation of Iowa, Des Moines, for appellant.

Richard R. Ramsey, Des Moines, for appellees.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

SACKETT, C.J.

Petitioner-appellant Michelle Farr appeals a district court ruling affirming the respondent-appellee Employment Appeal Board's ruling Farr voluntarily quit her employment and is ineligible for unemployment benefits. Farr contends there is not sufficient evidence she voluntarily quit her employment. She contends she was dismissed because of work restrictions due to her pregnancy. We affirm.

Farr started working as a truck driver for respondent-appellee Pattison Brothers Mississippi River Terminal, Inc., in September of 1996. On April 17, 1997, Farr, who was pregnant, was restricted by her doctor from driving a truck or lifting over twenty pounds. Farr left her employment with Pattison Brothers.

On May 27, 1997, Iowa Workforce Development told Farr she was eligible for unemployment benefits because she was dismissed because she was pregnant and not for misconduct. Workforce concluded Farr's physician had not placed any restrictions on her ability to work.

Pattison Brothers appealed the decision and a hearing was held before an administrative law judge on August 19, 1997. The administrative law judge found Farr's doctor restricted her from driving a truck. The administrative law judge determined Pattison Brothers did not have other work Farr could perform with the restrictions occasioned by her pregnancy. The administrative law judge found Farr resigned her position for personal medical reasons and was not eligible for unemployment benefits. The administrative law judge further ruled benefits Farr received could be recovered by the State. The administrative law judge specifically

ruled Farr was disqualified from receiving benefits until she has worked and been paid wages for insured work equal to ten times her weekly benefit amount.

Farr appealed the administrative law judge's decision to the Employment Appeal Board which modified the administrative law judge's decision. The Board held Farr was disqualified from receiving benefits until she had fulfilled the requirements set forth in Iowa Code section 96.5(1)(d), but in all other respects affirmed the administrative law judge's ruling. The district court affirmed the Employment Appeal Board's ruling.

Farr contends here the district court erred in affirming the Employment Appeal Board's finding she voluntarily quit her employment. She advances the administrative law judge found she did not want to leave the employment but was dismissed because no other work could be found for her. Farr further contends she discussed her pregnancy with her employer and asked for light duty work during the later stages of her pregnancy. Farr contends she was capable of performing clerical work or accounting. Farr contends, under Iowa Code section 96.5 (1997), pregnancy is not a proper basis for disqualification of a claimant for unemployment benefits.

Farr further advances the administrative law judge incorrectly assumed her work restrictions were her doctor's advice to quit work because she was pregnant. She contends the administrative law judge did not adequately consider the restrictions when she was able and available to engage in other work-related activities as required by section 96.4.

The Employment Appeal Board advances its decision did not deny Farr benefits based on a finding she voluntarily quit. The Board contends it correctly applied the dictates of section 96.5(1)(d). The Board further claims Farr had not complied with the statute's requirements she be fully recovered and certified by her physician and released to return to work. The Board advances at the time of the administrative hearings, Farr had not been released by her doctor to return to work.

The decisions of the agency are final if supported by substantial evidence and correct conclusions of law. *Heatherly v. Iowa Dep't of Job Serv.*, 397 N.W.2d 670, 670 (Iowa 1986).

The agency action is supported by substantial evidence in the record when that record is viewed as a whole. Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Aluminum Co. of America v. Employment Appeal Bd.*, 449 N.W.2d 391, 394 (Iowa 1989); *Hollensbe v. Iowa Dep't of Job Serv.*, 418 N.W.2d 77, 78 (Iowa App. 1987).

On appeal from a district court judgment rendered pursuant to 17A.19, the sole question is whether the district court correctly applied the law. To make this determination, the appellate court applies the standards of Iowa Code section 17A.19(8) to the agency's action to determine whether its conclusions are the same as those of the district court. *Jackson County Pub. Hosp. v. Public Employment Relations Bd.*, 280 N.W.2d 426, 429 (Iowa 1979).

The factual findings of the Board are supported by substantial evidence. Farr's arguments to the contrary have no merit.

Iowa Code section 96.5(1)(d) provides:

> An individual shall be disqualified for benefits:
> 1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
> . . . .
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Code § 96.5(1)(d).

The agency has promulgated a rule based on Iowa Code section 96.5(1)(d) entitled Separation Because of Illness, Injury or Pregnancy, which provides:

> a. *Nonemployment related separation.* The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

Iowa Admin. Code r. 871-24.26(6)(a) (1997).

Farr had not been released by her physician when she applied for benefits. We affirm.

AFFIRMED.