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FEB - 5 1980

CLERK SUPREME COURT
OF IOWA

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IN THE COURT OF APPEALS OF IOWA

DENNIS FETT,)

Petitioner-Appellant,)

Filed February 5, 1980

vs.)

SHELBY COMMUNITY SCHOOL)
DISTRICT and THE IOWA DEPARTMENT)
OF JOB SERVICE,)

340
2-63436

Respondents-Appellees.)

Appeal from Pottawattamie District Court - Paul H. Sulhoff, Judge.

Petitioner-teacher appeals district court order affirming agency denial of unemployment benefits, contending that his resignation was not voluntary. - Reversed and remanded.

John G. Hinde, Council Bluffs, for petitioner-appellant.

Walter F. Maley & Blair H. Dewey, Des Moines, for respondent-appellee, Iowa Department of Job Service.

Steven H. Krohn, of Smith, Peterson, Beckman & Willson, Council Bluffs, for respondent-appellee, Shelby Community School District.

Mark R. Adams, of Dreher, Wilson, Adams & Jensen, Des Moines, for Amicus Curiae, Iowa State Education Association.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner-teacher appeals from the district court order affirming the Iowa Department of Job Service's denial of his application for unemployment benefits. The agency asserts that petitioner's resignation constituted a voluntary quit without good cause attributable to his employer and disqualified him from receiving unemployment benefits. Petitioner contends that the school district effectively offered him the option of resignation in lieu of termination. Consequently, petitioner argues that his resignation did not constitute a "voluntary" quit. We agree with petitioner and reverse.

On March 6, 1978, petitioner received a letter informing him that the superintendent of the school district was recommending to the school board that petitioner's contract be terminated. A hearing on that recommendation was held on March 28, 1978. The board did not reach a decision at that hearing; however, after the hearing, in a discussion among petitioner, petitioner's non-legal representative, and the attorney for the school superintendent, the superintendent's attorney advised petitioner that it appeared that there would be just cause for termination of his contract, and that it would be to petitioner's advantage to resign rather than to be terminated by the board, since resignation would avoid potential problems in obtaining future employment. There was no evidence to show that the attorney also advised petitioner that resignation would disqualify him from receiving unemployment benefits, whereas termination would not. Petitioner submitted his resignation, which was pre-dated to the day prior to the termination hearing to avoid any references to the termination proceedings on petitioner's employment record. The resignation was accepted, and petitioner's subsequent attempts to obtain unemployment benefits were denied on the ground that his employment came to an end through petitioner's voluntary resignation rather than termination or discharge.

The district court's scope of review was governed by section 17A.19, The Code 1979. We review the district court's decision pursuant to section 17A.20, The Code 1979. Our duty is to correct errors of law made by the district court. Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979); Iowa R. App. P. 4.

This case does not involve questions of fact. We are called on only to determine whether petitioner's resignation constituted a voluntary quit within the meaning of section 96.5(1), The Code 1979. With regard to the construction of statutes, we give

some weight to the agency's construction, but we are not bound by it. Ellis v. Iowa Department of Job Service, 285 N.W.2d 153, 156 (Iowa 1979) (quoting City of Des Moines v. PERB, 275 N.W.2d 753, 759 (Iowa 1979)).

Under 370 I.A.C. section 4.25, "a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated." In the case at bar, the record shows a contrary situation. Petitioner did desire to remain employed by the school. There is no evidence in the record to show that petitioner ever considered resignation until the superintendent's attorney advised him that it would be to his advantage to do so. The attorney was effectively painting the picture of only two available alternatives for petitioner: resign or be terminated. This situation closely approaches the situation described in 370 I.A.C. section 4.26(21): "The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving."

We restrict our holding to the facts of this case, and go no further than to hold that under these circumstances, the resignation cannot be considered voluntary for the purpose of disqualification for unemployment benefits unless it is clear the teacher was advised that disqualification would occur, or was otherwise aware of that consequence. We remand this case to the agency for a determination of petitioner's eligibility for unemployment benefits as if he were terminated.

REVERSED AND REMANDED.

Donielson and Johnson, JJ., dissent.

DONIELSON, J. (dissenting)

I dissent. Claimant failed to show agency's action was unsupported by substantial evidence in the record made before the agency when viewed as a whole. City of Davenport v. Public Employment Relations Board, 264 N.W.2d 307, 311-312 (Iowa 1978). At most, the evidence reveals the superintendent and his attorney advised claimant regarding his termination for just cause by the school board and the possibility of accepting his resignation in lieu of termination. The advantages of resignation were pointed out and such an action was recommended. I fail to see, however, how this discussion even approaches the level of coercion found in the ultimatum described in 370 I.A.C. 4.26(21), as does the majority. Further, I do not consider the failure by superintendent's attorney to advise claimant regarding benefit disqualification to be controlling. Claimant was accompanied and advised by a representative of the Iowa State Education Association who should have been aware of the risk of benefit disqualification and advised claimant of it.

Claimant was not faced with the Hobson's choice portrayed by the majority. Rather, he was faced with balancing the risk of injuring his employment prospects due to termination against the benefits of unemployment compensation. These alternatives may have presented a difficult decision, but they did allow an exercise of free will. Here, claimant chose to enhance his employment prospects and should be required to bear the cost of that decision—loss of unemployment benefits because he voluntarily quit without good cause attributable to the employer.

Johnson, J., joins in this dissent.