IN THE COURT OF APPEALS OF IOWA

No. 9-107 / 98-595

FILED
APR 30 1999

LARRY D. SUNDE,

Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD and FLEETGUARD, INC.,

Respondents-Appellees.

Appeal from the Iowa District Court for Winnebago County, John S. Mackey, Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the respondent board's decision determining that the petitioner voluntarily quit his job with the respondent employer and thus was disqualified from receiving unemployment benefits. **AFFIRMED.**

Mark S. Soldat, Algona, for appellant.

Anita M. Garrison, Des Moines, for appellee.

Heard by Streit, P.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

The petitioner Larry Sunde appeals from a district court's ruling on judicial review affirming respondent Employment Appeal Board's decision determining he had voluntarily quit his job with respondent employer Fleetguard, Inc., and was thus disqualified from receiving unemployment benefits. Sunde claims the district court erred in determining his unexcused failure to report to work constitutes such a quit pursuant to employer work rules. We affirm.

Sunde has been an employee of Fleetguard, Inc. ("Fleetguard") for sixteen years. On May 9, 1997, Sunde sought medical treatment from Dr. Dennis Colby for migraine headaches, numbness, and body pain resulting from a non-work-related cervical condition. Sunde met with Dr. David Beck, a neurosurgeon, on May 19 to discuss further treatment options. Dr. Beck arranged two acupuncture treatments for June 9 and June 17.

Sunde returned to Dr. Colby on May 28 for additional medical treatment. During this visit, Sunde provided Dr. Colby a Fleetguard leave-of-absence form. Dr. Colby completed the form and indicated on it that Sunde would be gone from work from May 28 until June 5. The form was sent by facsimile to Fleetguard. Sunde alleges he never saw this form after Dr. Colby completed it, nor was made aware of its contents. He further alleges he was under the impression his medical leave would run through June 17, the date of his second acupuncture treatment.

On June 5, Sunde did not return to work. He remained absent for four consecutive work days: June 6, 9, 10, and 11. Fleetguard notified Sunde on June 12

that he had violated the company's three day unexcused absence rule and that Fleetguard was ending their employment relationship with Sunde. Dr. Beck provided Fleetguard with a work absence excuse on June 18 retroactively taking Sunde off work from June 5 to June 18. Fleetguard nevertheless refused to reinstate Sunde.

Sunde requested unemployment benefits, but was denied on the basis that he had voluntarily terminated his employment with Fleetguard on June 12. An administrative law judge affirmed the decision, and the Employment appeal Board adopted the ALJ's decision as the final agency action. On judicial review, the district court affirmed the board's action. Sunde now appeals.

I. Scope of Review. Our authority to review the district court's ruling derives from Iowa Code section 17A.20. *See* Iowa Code § 17A.20 (1997). Under Iowa Code section 17A.19(8), our review of agency action is to determine whether our conclusions are the same as those of the district court. *See Sherman v. Pella Corp.*, 576 N.W.2d 312, 316 (Iowa 1998). We may reverse, modify, affirm or remand to the agency for further proceedings if the substantial rights of a party have been prejudiced and the agency's action: (1) is affected by errors of law; (2) is not supported by substantial evidence in the whole record; or (3) is characterized by abuse of discretion. *See* Iowa Code § 17A.19(8)(e)–(g) (1997); *Sherman v. Pella Corp.*, 576 N.W.2d at 316; *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997).

Evidence is "substantial if reasonable minds would accept it as adequate to reach the same finding. The question is not whether evidence might support a different finding, but whether the evidence supports the findings actually made."

Kiesecker v. Webster City Custom Meats, 528 N.W.2d 109, 110 (Iowa 1995) (citations omitted). We will not interfere with the agency's findings unless the evidence is uncontradicted and reasonable minds could not draw different inferences. *See Longford v. Kellar Excavating & Grading, Inc.*, 191 N.W.2d 667, 668 (Iowa 1971).

II. Whether Sunde Voluntarily Quit. Iowa Code section 96.5 governs when an individual shall be disqualified for unemployment 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 of workforce development]. But the individual shall not be disqualified if the department finds that:
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> 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 . . . .

Iowa Code § 96.5 (1997). A voluntary quit without good cause is defined in the Iowa Administrative Code:

> **871—24.25(96) Voluntary quit without good cause.** In general, 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. The employer has the burden of proving that the claimant is disqualified for benefits . . . . However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits . . . . The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
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> **24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.**

Iowa Admin. Code r. 871—24.25(96) (1997).

Whether a quit is voluntary or involuntary is a legal issue. *See Peck v. Employment Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa App. 1992). Quitting requires an intention to terminate employment accompanied by an overt act of carrying out that intent. *See Local Lodge No. 1426 v. Wilson Trailer Co.*, 289 N.W.2d 608, 612 (Iowa 1980).

The question on appeal is whether Sunde's mere absence from his job can be considered, without more, a voluntary quit as a matter of law. Sunde argues the record is devoid of any evidence proving he intended to quit, that he did not want to quit, and that therefore the decision of the agency should be reversed.

We disagree with Sunde's argument that whether an employee intended to end his relationship with his employer can only be established by direct evidence, including specifically whether the employee says he had any intent to quit. Our courts have long held intent can be inferred from circumstantial evidence and that people intend the natural consequences of their actions. *See, e.g., State v. Adams*, 554 N.W.2d 686, 692 (Iowa 1996); *State v. Finnel,* 515 N.W.2d 41, 42 (Iowa 1994); *State v. Olson*, 373 N.W.2d 135, 136 (Iowa 1985); *Lukecart v. Swift & Co.*, 256 Iowa 1268, 1283, 103 N.W.2d 716, 724 (Iowa 1964). We have so held because it is often difficult to prove intent by direct evidence. *See State v. Adams*, 554 N.W.2d at 692. Sunde points to no statute or administrative code provision which says intent t terminate an employment relationship must be established by direct evidence.

We determine Fleetguard's rule in conjunction with Administrative C section 871—24.25(4) provides an acceptable mechanism by which int

terminate an employment relationship can be inferred. Administrative Code section 871— 24.25(4) establishes a legally valid presumption of voluntary quit. The district court wisely reflected that to accept Sunde's argument and reverse the agency's ruling would allow employees to claim their real intent was to return to work, and hold that employers could not otherwise prove the intent of their employees.

The question thus remains whether Sunde voluntarily quit or was discharged. If he voluntarily quit, he is not eligible for unemployment benefits. *See* Iowa Code § 96.5(1). If he was discharged, he could recover benefits so long as he was not discharged because of misconduct. *See* Iowa Code § 96.5(2) (1997); *Henecke v. Iowa Div. Job Service*, 533 N.W.2d 573, 575 (Iowa App. 1995).

We determine Sunde voluntarily quit his job with Fleetguard. It is undisputed Fleetguard had a three day absence rule and that Sunde was aware of this rule. It is further undisputed that Sunde was absent from work for four consecutive scheduled work days without contacting Fleetguard as to the nature of his absence. From this, we can infer Sunde intended to terminate his employment with Fleetguard, that his accompanying overt act of a four-day absence after his medical leave expired carried out this intent, and that he voluntarily quit his job without good cause attributable to Fleetguard. Pursuant to Iowa Code section 96.5 he is therefore ineligible for unemployment benefits.

Sunde disputes this analysis by pointing out he was unaware his leave of absence ended on June 5 and that he was required to return to work the following day. He argues this "mix up" was the fault of Dr. Colby who notified Fleetguard of the

wrong dates of Sunde's expected absence. We find Sunde's attempt to reassign responsibility baseless. Iowa Code section 96.5(d) places responsibility on employees for notifying employers of the necessity for absence due to illness. *See* Iowa Code § 96.5(1)(d). That Dr. Colby contacted Fleetguard regarding Sunde's absence does not negate the fact that Sunde was ultimately responsible for informing Fleetguard of his illness and time off from work. Sunde was responsible for knowing the contents of his medical leave and release orders. It was his responsibility to know how long he was excused from work. Having failed in this regard, his unemployment and ineligibility for benefits is his own fault. *See Sharp v. Employment Appeal Bd.*, 479 N.W.2d 280, 283 (Iowa 1991) (unemployment reserves are for the benefit of persons unemployed through no fault of their own).

We acknowledge that in the circumstances of this case our decision affirming Fleetguard's response to Sunde's absence may appear harsh. Nevertheless, under our standard of review we concur with the conclusions reached by the district court in affirming the decision of the Employment Appeal Board.

AFFIRMED.

No. 98-595. [9-107] SUNDE v. EMPLOYMENT APPEAL BOARD

Appeal from the Iowa District Court for Winnebago County, John S. Mackey, Judge. **AFFIRMED.** Heard by Streit, P.J., and Vogel, and Zimmer, JJ. Opinion by Zimmer, J. (7 pages $2.80)

Larry Sunde appeals from a district court's ruling on judicial review affirming Employment Appeal Board's decision determining he had voluntarily quit his job and was thus disqualified from receiving unemployment benefits. **Background.** Sunde missed four consecutive work days following the end of a medical leave, and therefore, pursuant to his employer's rule and the Administrative Code, his employer assumed he had quit his job. His employer thus terminated its employment relationship with him, and Sunde thereafter sought unemployment benefits. **OPINION HOLDS:** Iowa Code section 96.5 governs when an individual who voluntarily quits his or her job shall be disqualified for unemployment benefits. Iowa Administrative Code rule 871—24.25(96) defines voluntary quit. The question on appeal is whether Sunde's mere absence from his job can be considered, without more, a voluntary quit as a matter of law. We disagree with Sunde's argument that whether an employee intended to end his relationship with his employer can only be established by direct evidence, including specifically whether the employee says he had any intent to quit. Our courts have long held intent can be inferred from circumstantial evidence and that people intend the natural consequences of their actions. Sunde points to no statute or administrative code provision which says intent to terminate an employment relationship must be established by direct evidence. We determine his employer's rule in conjunction with Administrative Code section 871—24.25(4) provides an acceptable mechanism by which intent to terminate an employment relationship can be inferred. Administrative Code section 871— 24.25(4) establishes a legally valid presumption of voluntary quit. We determine Sunde voluntarily quit his job. It is undisputed his employer had a three day absence rule and that Sunde was aware of this rule. It is undisputed Sunde was absent from work for four consecutive scheduled work days without contacting his employer as to the nature of his absence. From this, we can infer Sunde intended to terminate his employment, that his accompanying overt act of a four-day absence after his medical leave expired carried out this intent, and that he voluntarily quit his job without good cause attributable to his employer. Pursuant to Iowa Code section 96.5 he is therefore ineligible for unemployment benefits. Sunde nevertheless argues his four-day absence was his doctor's fault. Sunde claims his doctor provided his employer with the wrong dates for medical leave and that he was unaware this mistake had been made. Under Iowa Code section 96.5(1)(d), employees are responsible for notifying employers of the necessity for medical leave. Employees are thus ultimately responsible for knowing the contents of their medical leave and release orders. It was Sunde's responsibility to know how long he was excused from work. He failed in this regard. Because unemployment reserves are for the benefit of persons unemployed through no fault of their own, he is ineligible for benefits.