

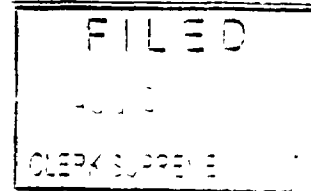
IN THE COURT OF APPEALS OF IOWA

No. 1999-42 (9-197) / 98-1084
Filed August 27, 1999

DAWN MANLEY-SCAVO,
Petitioner-Appellant,

vs.

**AMERICAN REPUBLIC INSURANCE CO.,
and IOWA EMPLOYMENT APPEAL BOARD,**
Respondents-Appellees.



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

Petitioner appeals her denial of unemployment benefits in which the district court affirmed the agency's finding that she had left her employment without good cause attributable to her employer. **AFFIRMED.**

Michael T. Jalovec and James A. Sinclair of Sinclair & Associates, West Des Moines, for appellant.

Mari Thinnes Culver and Bradley C. Obermeier of Duncan, Green, Brown, Langeness & Eckley, P.C., Des Moines, and Thomas Murphy, Des Moines, for appellee American Republic Insurance Company.

Anita M. Garrison and Richard R. Ramsey, Des Moines, for appellee Iowa Employment Appeal Board.

Considered by Sackett, C.J., and Huitink and Vogel, JJ.

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SACKETT, C.J.

Petitioner-appellant Dawn Manley Scavo appeals from a denial of unemployment benefits. Appellant was employed by respondent-appellee American Republic Insurance Company from 1984 until she quit in 1997. She contends the Iowa Employment Appeal Board was incorrect in finding she left employment without good cause attributable to her employer and the Iowa District Court erred in affirming the Appeal Board's decision. We affirm.

The last day appellant worked for American Republic was April 9, 1997. On that day, she consulted a doctor contending she suffered depression and anxiety. At the time, she had a number of personal and family problems which she made known to her employer. Appellant's doctor recommended she not work for two days and seek help from a counselor. On April 14, 1997, the doctor recommended she not work for another two days. She continued to take off work. American Republic was aware she was seeking medical help.

American Republic first learned appellant considered her problems work related after receiving a letter dated June 26, 1997, from appellant's doctor stating appellant suffered from a panic and depressive disorder that would be exacerbated by her returning to work. The doctor recommended appellant receive a "medical termination" from American Republic as he believed her place of employment contributed to her symptoms. The doctor further stated she would be able to return to work in a less stressful job. American Republic replied to the doctor seeking a

clarification as to whether appellant was not able to work for American Republic or if they could accommodate her by moving her to another position.

The next thing that happened was that on July 9, 1997, appellant filed for unemployment benefits. Then American Republic received a letter dated July 9, 1997, and delivered July 14, 1997, where appellant said she was not able to return to American Republic due to illness specifically relating to her employment.

When the Employment Appeal Board denied appellant's claim for unemployment benefits, she appealed to the district court. The district court affirmed, and this appeal follows. Appellant contends here (1) her separation from work was not voluntary because her doctor told her she could not continue the work, (2) the Employment Appeal Board erred in not requiring American Republic to prove she left work voluntarily, (3) the Employment Appeal Board's finding she did not give American Republic notice of an injury and her intention to quit was not supported by substantial evidence, (4) the Employment Appeal Board was incorrect in requiring her to seek an accommodation in employment from American Republic, and (5) American Republic failed to prove her psychological problems were not caused by or aggravated by conditions at American Republic.

This is an appeal from an agency decision in a contested case. Iowa Code § 17A.2(2). In contested case proceedings, the agency is empowered to hear evidence and make findings of fact and conclusions of law. Iowa Code § 17A.19(7). The district court, when exercising the power of judicial review over agen

functioning in an appellate capacity to correct errors at law. Iowa Code § 17A.19(8). This court, as is the district court, is bound by the agency's findings of fact if the findings are supported by substantial evidence. We are not bound by the agency's legal conclusions, but may correct misapplications of the law. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 701 (Iowa 1988). The Employment Security Law should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment. *Roberts v. Iowa Dep't of Job Serv.*, 356 N.W.2d 218, 221 (Iowa 1984).

The applicable statute is Iowa Code section 96.5. It 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, . . .

Iowa Code § 96.5 (1997).

The burden is on the employee to show entitlement to unemployment compensation. The employer, however, has the burden of proving a claimant quit without good cause attributable to the employer. See Iowa Code § 96.6; *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 541 (Iowa 1985).

Appellant first contends her separation was not voluntarily because her doctor told her not to work. She relies heavily on *Sharp v. Employment Appeal Bd.*, 479 N.W.2d 280 (Iowa 1991), where there was an agency finding the employee could not do the work required by her job because it might imperil the employer's operations. *Id.* at 283. In that case, the court said, "We, therefore,

conclude that, for purposes of unemployment compensation, Sharp [the employee] left her employment involuntarily. . . . and thus . . . was not disqualified for benefits." *Id.* at 283-84. There was no similar agency finding here, nor is there any evidence appellant's return to work might imperil American Republic's operation. We disagree with appellant that *Sharp* should control. Rather, we find the issues raised by appellant are controlled by the holding in *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402 (Iowa 1993). There the court held, before quitting, an employee must give an employer notice of work-related health problems and that the employee intends to quit unless those problems are corrected or the employee is otherwise reasonably accommodated. *Id.* at 405. Absent such notice, the employee has left work voluntarily without good cause attributable to the employer and is not entitled to unemployment compensation benefits. *Id.*

The evidence supports a finding appellant quit before American Republic was given an opportunity to accommodate appellant's condition. Having so determined, we need not address the other issues raised in appellant's brief.

AFFIRMED.