IN THE COURT OF APPEALS OF IOWA

No. 2-433 / 92-266

FILED
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CLERK SUPREME COURT

BEECHER, RATHERT, FIELD, FISTER, WALKER & MORRIS,

Appellants,

vs.

EMPLOYMENT APPEAL BOARD and LINDA J. TABER,

Appellees.

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Appeal from the Iowa District Court for Black Hawk County, Alan L. Pearson, Judge.

The employer appeals the district court's ruling which affirmed the board's award of unemployment compensation benefits to a secretary discharged for poor work performance. **AFFIRMED.**

Eric W. Johnson and Jon Fister of Beecher, Rathert, Roberts, Field, Fister, Walker & Morris, Waterloo, for appellants.

Joe E. Smith, Des Moines, for appellee Employment Appeal Board.

Linnea M. Nelson, Legal Services Corp. of Iowa, Waterloo, for appellee Taber.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

Linda J. Taber worked as a legal secretary for the law firm of Beecher, Rathert, Field, Fister, Walker & Morris from April 30, 1990, until August 30, 1990. At the time she was hired, Taber was pregnant and the law firm was aware of her condition. Taber had presented the firm with an impressive resume which one of the firm's partner's verified in conversations with one of Taber's former employers.

Taber's job performance did not meet the firm's expectations. She made several typographical and spelling errors in documents she prepared. Her health declined because of her pregnancy to the point her physician advised her to stop working. The firm notified Taber in writing that it would honor her maternity leave and would pay her disability insurance for several weeks following delivery of her child, but her employment would formally end at the completion of her disability.

The administrative law judge awarded unemployment benefits to Taber after finding that although her general job performance was below her competence, Taber performed as competently as she was able under the circumstances. Thus, the record did not support a finding of misconduct as the law firm had advocated. The Employment Appeal Board and the district court affirmed the decision to award job insurance benefits. The law firm appeals.

SCOPE OF REVIEW. 35

The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that determination this court applies the standards of section 17A.19(8) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

DISCUSSION.

The central issue in this case is whether the district court correctly applied the definition of misconduct to Taber's work conduct and correctly ruled she was not disqualified from receiving any unemployment compensation.

Iowa Code section 96.5(2)(a) (1991) provides that an individual discharged from employment for misconduct will be disqualified from receiving unemployment benefits. Misconduct is defined as:

> [A] deliberate act or omission by a worker which constitutes a material breach of the duties and obligations of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in the carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties or obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies, or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

345 Iowa Admin. Code § 4.32(1)(a) (1991).

This definition has been approved by the Iowa Supreme Court in Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

We find the agency's decision was supported by substantial evidence. A paralegal for whom Taber worked

testified Taber was trying to perform satisfactorily and was not intentionally performing poorly. The employer was unable to establish by a preponderance of the evidence that Taber was the employee who actually committed the error which the employer claims ultimately led to her dismissal. In addition, the evidence indicated Taber's physical problems related to her pregnancy may have contributed to her performance problems. The performance the employer claims was willful misconduct involves typographical and spelling errors in several legal documents. All parties agreed Taber was not guilty of willful misconduct. From this record, we cannot determine, as a matter of law, the district court erred in determining Taber's performance failed to rise to "misconduct," a finding necessary to disqualify her from receiving unemployment compensation. Accordingly, we affirm the decision of the district court granting Taber unemployment benefits.

AFFIRMED.