FILED
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CLERK SUPREME COURT



IN THE COURT OF APPEALS OF IOWA

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| MARK E. STINSON, | ) | |
| Appellant, | ) | Filed February 5, 1980 |
| vs. | ) | |
| IOWA DEPARTMENT OF JOB SERVICE | ) | |
| Appellee, | ) | |
| and | ) | 343 |
| WILSON FOODS CORPORATION, | ) | 2-63560 |
| Intervenor-Appellee. | ) | |

Appeal from Polk District Court - Ray Hanrahan, Judge.

Petitioner appeals district court affirmance of agency action denying him unemployment benefits. - Reversed.

Linda S. Pettit, Des Moines, for appellant.

Walter F. Maley & Blair H. Dewey, Des Moines, for appellee.

John A. Templer, of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for intervenor-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

OXBERGER, C.J.

Petitioner, Mark E. Stinson, appeals district court affirmance of agency action denying him unemployment benefits. We reverse.

On February 3, 1978, intervenor, Wilson Foods Corporation, indefinitely suspended Stinson for tardiness. Subsequently, the company determined the suspension would run for three weeks but Stinson failed to return to work after that time and the company considered him to have quit without notice. Stinson requested unemployment benefits from respondent, Iowa Department of Job Service, but his application was denied by a claims deputy. A contested case hearing on Stinson's application then was held and the hearing officer denied payment of benefits because he found Stinson voluntarily quit without good cause attributable to the employer. That decision was affirmed by the respondent agency and rehearing was denied. Stinson then sought judicial review of the agency action and appeals the district court's affirmance of the agency action.

Stinson first asserts agency rules, chapter 17A, The Code 1979, and constitutional due process provisions were violated by the agency because administrative functions were combined in the presiding hearing officer. The State claims Stinson failed to preserve error on this claim because he failed to raise it before the hearing officer. We find the need for discussion on the matter is obviated by our finding the agency improperly ruled Stinson voluntarily quit without good cause attributable to his employer.

Stinson claims the agency incorrectly found he voluntarily had quit without good cause attributable to the employer, Wilson Foods. While we may not reverse the agency's fact findings if they are supported by substantial evidence in the record, see section 17A.19(f)(8), The Code, 1979, we make our own independent determination of the meaning and applicability of relevant statutes to the case under review, Ellis v. Iowa Department of Job Service, 285 N.W.2d 153, 156 (Iowa 1979), and are free to correct errors of law. We accept the agency findings Stinson was indefinitely suspended, did not return to work, and was considered by Wilson Foods to have quit without notice, are supported by substantial evidence. Those facts, however, do not support the legal conclusion Stinson voluntarily quit without good cause attributable to Wilson Foods.

A "voluntary" quit is one of the worker's own volition or choice. See Moulton v.

Iowa Employment Security Commission, 239 Iowa 1161, 1165, 34 N.W.2d 211, 213 (1948); 370 I.A.C. section 4.25. Here, Stinson was indefinitely suspended. An employee indefinitely suspended is not required to return to work until he receives notice he may do so. Here, Wilson Foods admits it did not give actual notice to Stinson. It claims effective notice was given because it told Stinson's union representative the suspension had been reduced to three weeks. Wilson Foods did not show Stinson had appointed the union representative as his agent nor did it introduce any contract or collective bargaining agreement supporting its claim the union representative was to serve as agent for the employee in suspension situations. Neither Stinson nor his authorized agent received notice he could resume work. Without the notice, he had no duty to return to work and his failure to do so cannot be deemed a voluntary quit. We find the trial court improperly applied section 96.5(1). Accordingly, we reverse the judgment of the trial court and return the case to the Department for allowance of benefits.

REVERSED.

Donielson, J., dissents.

**DONIELSON, J.** (dissenting)

I dissent. The record contains substantial evidence to support the hearing officer's decision the claimant voluntarily quit without good cause attributable to his employer. Claimant's indefinite suspension did not eliminate his responsibility to make reasonable inquiries regarding the status of his employment. This became particularly true after three weeks had passed from the date of his suspension, which he knew to be the usual duration for a disciplinary suspension before being recalled. In fact, claimant had an opportunity to make such an inquiry when he picked up his vacation pay, but failed to do so. He had the responsibility and opportunity to discuss this matter with his union representative when he talked with him, but also failed to do this. Claimant presumably no longer wished to remain employed. See 370 I.A.C. § 4.25. In such a situation, it is reasonable to require claimant, who had been indefinitely suspended, to have contacted his employer to determine whether he remained suspended or was dismissed. Such an inquiry here would have revealed the communication problem and prevented this dispute. The employer's responsibility to notify claimant he could return to work was satisfied when it notified the union representative, a practice followed many times in the past. Under these facts, I can only conclude claimant failed to prove he did not voluntarily quit his position without good cause attributable to his employer. See Walles v. Iowa Employment Securities Commission, 219 N.W.2d 539, 543 (Iowa 1974).