



IN THE COURT OF APPEALS OF IOWA

MARJORIE M. JOHNSTON,	)	
Petitioner-Appellant,	)	Filed April 8, 1983
vs.	)	
IOWA DEPARTMENT OF JOB SERVICE,	)	2-396
Respondent-Appellee.	)	2-68176
and	)	
CRAIGMONT CARE CENTER, INC.,	)	
Intervenor-Appellee.	)	

Appeal from Polk District Court, M. J. V. Hayden, Judge.

Petitioner appeals from district court decision on judicial review affirming her disqualification from receipt of unemployment benefits, asserting that she left her employment due to unsafe, unlawful, intolerable, and/or detrimental working conditions constituting good cause attributable to her employer. **AFFIRMED.**

Kathleen S. Bean, Des Moines, for petitioner-appellant.

Walter F. Maley, Joseph L. Bervid, and Blair H. Dewey, Des Moines, for respondent-appellee.

Bruce G. Kelley of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for intervenor-appellee.

Heard en banc.

PER CURIAM

Petitioner appeals from district court decision on judicial review affirming her disqualification from receipt of unemployment benefits, asserting that she left her employment due to unsafe, unlawful, intolerable, and/or detrimental working conditions constituting good cause attributable to her employer. We affirm the district court's decision.

Petitioner Marjorie M. Johnston, claimant in these proceedings, was employed as a licensed practical nurse at Craigmont Care Center from September 19, 1980, until February 10, 1981. On February 10 petitioner called her supervisor to tell her that she would not be returning after her shift that morning, and to discuss a notice posted by the supervisor the previous day regarding resident baths. Petitioner's responsibilities at the care center included bathing residents, charting their medical attention, and providing general patient care. Petitioner stated that she left her employment due to an inadequate supply of hot water, linens for the rooms, and stoppers for some residents' sinks. Following her departure, petitioner applied for unemployment benefits.

At the hearing for a determination of eligibility for unemployment benefits, evidence was presented that the care center had passed a licensing evaluation conducted by the State of Iowa in January 1981, at which time the water temperature was within state regulations, but that the temperature had also ranged from 97 to 118 degrees. State regulations required the temperature to be 115 degrees with a 5 degree variance. Testimony was also given to the effect that the employer knew there was a problem with the availability of hot water at times, had attempted to correct it, and had in fact corrected it by March 2, 1981.

The hearing officer denied benefits on the ground that petitioner voluntarily left work without good cause attributable to her employer, and the appeal board affirmed. Petitioner then filed for judicial review, agreeing that the temperature of the water was the controlling issue and should be decisive of the issue whether she left employment for good cause attributable to her employer. The district court affirmed the decision denying benefits. It is from this decision that petitioner now appeals.

The sole issue with which we are presented on appeal is whether there was "substantial evidence in the record made before the agency when that record is viewed as a whole" to support the agency's determination that petitioner left her work voluntarily without good cause attributable to her employer and hence was disqualified from receiving benefits. See Iowa Code §§ 17A.19(8)(f); 96.5(1)(1983). In City of Davenport v. Public Employment Relations Board, 264 N.W.2d 307 (Iowa 1978), the Iowa Supreme Court addressed the substantiality-of-evidence standard:

Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. As provided in Code § 17A.19(8)(f), the entire record must be considered in determining whether the challenged finding has sufficient support. Nonetheless, the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Id. at 311 (citations omitted).

Our consideration of the record as a whole leads us to the conclusion that the agency's determination that petitioner was not entitled to unemployment benefits was supported by substantial evidence. Petitioner claims that because of the inadequacy of hot water and the notice mandating each shift to give the assigned baths to residents, she was required to work under conditions which were "unsafe, unlawful, intolerable and detrimental." She contends that this was sufficient under the agency's own rules, see 370 I.A.C. § 4.26, to make her departure constitute "good cause attributable to her employer" and thus to prevent her

disqualification from benefits under Iowa Code section 96.5(1). The employer argues that the hot water problem was only temporary and that petitioner could have employed temporary measures to work around the problem, as did the other shifts, until the system was repaired.

We consider the issue of the duration of the hot water problem to be an essential one in this case, and it is one which engendered some dispute at the hearing. A witness for the employer testified that the problem lasted for no more than four to six weeks, during which time two or three plumbing calls were made, and that the problem existed only on very cold days. Although petitioner alleged that the problem began much earlier and that she did not give baths from November on because of it, we believe that substantial evidence supports the fact findings of the hearing officer, the appeals board and the district court. These findings included: that the employer knew there was a problem and had made attempts to correct it, that the problem was only acute on very cold days, that the problem could not be corrected until warmer weather arrived, that the temperature was found to conform to State regulations at a licensing evaluation conducted in January of 1981, that the water was at all times at least tepid and not cold, that the employer never instructed employees to bathe residents in cold water, and that the problem was totally corrected by March 2, 1981. The district court concluded, and we agree, that "the temporary failure of the Care Center's boilers to maintain the required temperature does not constitute unsafe, unlawful, intolerable or detrimental working conditions insofar as petitioner, Marjorie Johnston, is concerned." The cases cited by petitioner which hold such working conditions to be sufficient to justify departure with good cause attributable to the employer have involved problems of a more permanent nature. See, e.g., Foster v. Review Board, 421 N.E.2d 744 (Ind. App. 1981). The mere fact that it may have been a "laudable motive" has generally been found to be insufficient. See 81 C.J.S.

§ 226 at 449-51.

While petitioner's testimony may seem to suggest that the water temperature problem was more severe and continuous than the testimony for the employer would indicate, the fact that it is possible to draw two inconsistent conclusions from the evidence does not mean that the agency's finding was not supported by substantial evidence. City of Davenport, 264 N.W.2d at 311. We adhere to the admonition that in close cases such as this we should not substitute our judgment for that of the agency. City of Davenport, 264 N.W.2d at 324 (quoting NLRB v. Magnesium Casting Co., 427 F.2d 114, 118 (1st Cir. 1970), aff'd. 401 U.S. 137, 91 S. Ct. 599, 27 L. Ed. 735 (1971)). Substantial evidence in the record supports the agency's conclusion that petitioner left her employment voluntarily "without good cause attributable to her employer." The decision of the trial court is therefore affirmed.

AFFIRMED.