IN THE COURT OF APPEALS OF IOWA

No. 8-342 / 97-1211

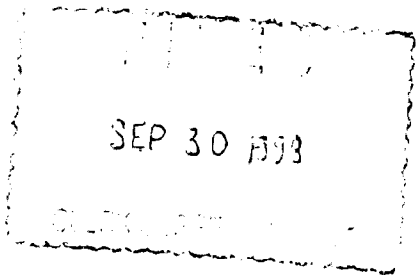
GARY OAKS,

Petitioner-Appellant,

vs.

IOWA EMPLOYMENT APPEAL BOARD,

Respondent-Appellee.



Appeal from the Iowa District Court for Polk County, Arthur Gamble, Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the respondent's decision determining the petitioner's voluntary quit of his job disqualified him from receiving unemployment benefits. **AFFIRMED.**

Joe Walsh, Des Moines, for appellant.

William C. Whitten, Des Moines, for appellee.

Considered by Cady, C.J., and Vogel, and Mahan, JJ.

CADY, C.J.

Gary Oaks appeals the district court decision affirming the Employment Appeal Board (Board) decision denying him unemployment benefits. He claims the decision by the Board was arbitrary and capricious and his case should have been decided under misconduct rather than voluntary quit rules. We affirm the district court.

Oaks was employed by Washington Fansteel Manufacturing (Fansteel) as a lead worker setting up machinery from 1976 until March 1996. In May 1992, Oaks injured his back lifting steel. As a result of the injury, he missed work for varying time periods. In April 1995, his physician limited his bending and lifting to no more than twenty-five pounds. Despite Fansteel's initial accommodations, Oaks continued to experience back problems. Oaks' physicians recommended he find a more suitable job for his condition. In March 1996, Oaks consulted a company doctor before receiving permission to return to work.

In March 1996, the parties also conducted a mediation hearing concerning Oaks' 1992 back injury. The mediation resulted in a settlement of $68,900 compensation for his back injury and his resignation based upon disability reasons. A Fansteel representative testified Oaks had the option of taking a lesser settlement amount and continuing to work. The representative further testified Oaks did not request any further accommodations other than the twenty-five pound lifting restriction already in place, and he had the opportunity to return to work if his claim

was not settled. Oaks, conversely, testified he agreed to the settlement because he believed Fansteel would not accommodate his back condition.

Oaks subsequently filed for unemployment benefits. After he was denied benefits by an Iowa Workforce Development representative, he appealed the denial to an administrative law judge. The administrative law judge upheld the denial of benefits, noting Oaks could have continued his employment with Fansteel had he chosen to do so. Oaks further appealed the administrative law judge's decision to the Board. The Board also upheld the denial of benefits. Oaks then appealed the Board's decision to the district court. The district court also affirmed the denial of benefits, finding Oaks was not forced to resign, and instead, had a choice between continuing to work and accepting a smaller settlement, or resigning and receiving a larger settlement. The district court further determined Oaks' resignation constituted a voluntary quit, which disqualified him from receiving unemployment benefits.

On appeal Oaks claims the district court erred by failing to find the Board's decision was arbitrary and capricious based upon the Board's failure to consider Iowa Administrative Code section 4.26(6)(b) as an exception to the voluntary quit provision. He also maintains his discharge should have been decided under misconduct rather than the voluntary quit rules.

I. Standard of Review

Judicial review of an administrative agency is governed by the standards of Iowa Code section 17A.19(8) (1997). *Robbennolt v. Snap-On Tools Corp.*, 555

N.W.2d 229, 233 (Iowa 1996). Because the district court acts in an appellate capacity to correct any legal error made by the agency, our task is merely to determine whether our legal conclusions match those reached by the district court. *Bridgestone/Firestone v. Accordino*, 561 N.W.2d 60, 62 (Iowa 1997). The agency's decision is final if it is supported by substantial evidence and is correct in its conclusions of law. *Robbennolt*, 555 N.W.2d at 233. Accordingly, in reviewing the interpretation of the statutes governing the agency, we defer to the expertise of the agency, but reserve for ourselves the final interpretation of the law. *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995).

The agency's findings of fact have the effect of a jury verdict. *Vosberg v. A. Y. McDonald Mfg. Co.*, 519 N.W.2d 405, 407 (Iowa App. 1994). We, like the district court, are obliged to broadly and liberally construe an agency's factual findings so as to uphold, rather than defeat, the agency's decision. *Bridgestone/Firestone*, 561 N.W.2d at 62. The possibility of drawing two inconsistent conclusions from the same evidence does not prevent the agency's decision from being supported by substantial evidence. *Robbennolt*, 555 N.W.2d at 233.

II. Unemployment Benefits

An employee who quits employment without good cause attributable to the employer is disqualified from receiving unemployment benefits. Iowa Code § 96.5(1) (1995); *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa App. 1996). Iowa Code section 96.5(1) addresses the issue of voluntary quitting:

> An individual shall be disqualified for benefits [under the following circumstances]:
> 1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the division of job service. But the individual shall not be disqualified if the division finds that:
> 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, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the division, provided the individual is otherwise eligible.

The exception to the voluntary quit rule due to injury or illness allows a claimant compelled to leave employment from factors and circumstances directly connected with the employment to nevertheless receive unemployment benefits. Iowa Admin. Code r. 871-24.26(6)(b) (1997). However, to be eligible under this exception, the claimant must: (1) present competent evidence showing adequate health reasons to justify termination; (2) before quitting inform the employer of the work-related health problem; and (3) inform the employer prior to quitting the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. *Id.*

Oaks claims the administrative law judge and the Board failed to consider the exception to the voluntary quit rule outlined in administrative rule 24.26(6)(b). He asserts because substantial evidence supports the application of this rule to his case, the Board's decision should be reversed, or alternatively, remanded with instructions

to consider the applicability of rule 24.26(6)(b). Further, he maintains the district court failed to properly consider this argument. The Board claims Oaks did not expressly argue section 24.26(6)(b) applied to his case when he presented his argument to the administrative law judge.

While Oaks presented evidence of his back problem, he did not inform his employer prior to quitting he intended to quit unless they provided him reasonable accommodations. *See Cobb v. Employment Appeal Bd.*, 506 N.W.2d 445, 447-48 (Iowa 1993) (affirming denial of unemployment benefits where employee failed to comply with notice requirements in Iowa Code section 96.5(1)(d)). At the time of the mediation, the Fansteel physician had permitted him to return to work. Further, during the negotiation, Oaks was presented with the option of continuing work or resigning with a larger settlement. Oaks did not, at this point, request further accommodations or inform Fansteel of his intention to quit unless more accommodations were made. Accordingly, we find the Board's decision is supported by substantial evidence.[1]

Oaks next asserts his employment separation from Fansteel should have been decided under the misconduct rules rather than the voluntary quit rules. Specifically,

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[1] While Oaks claims we should remand this case for the Board to consider the applicability of section 24.26(6)(b), the record indicates the administrative law judge considered the voluntary quit provision in Iowa Code section 96.5(1). We can conclude from the reference to section 96.5(1) the administrative law judge fully considered all aspects of the voluntary quit provision. Furthermore, we need only determine whether the agency's decision is supported by substantial evidence and is correct in its conclusions at law. *Second Injury Fund v. Bergeson*, 526 N.W.2d 543, 546 (Iowa 1995).

he maintains he was constructively discharged by Fansteel's attempts to render his working conditions so intolerable he had to leave.

Because we have determined the Board's decision is supported by substantial evidence, and Oaks' employment separation is the result of his voluntary decision to quit, we need not consider his second claim that his employment separation should have been decided under misconduct rather than voluntary quit rules. Further, the record does not support his assertion he was constructively discharged.

We have considered all of Oaks' claims and affirm the district court.

AFFIRMED.