IN THE COURT OF APPEALS OF IOWA

65

No. 9-554 / 89-512

FILED
MAR 27 1990
CLERK SUPREME COURT

DAWN C. CARTER,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD and IBP, INC.,

Appellees.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

Petitioner was discharged from her employment for excessive unexcused absences. She sought unemployment benefits. The Employment Appeal Board denied her benefits on the ground she was discharged for misconduct. The board refused to reopen the record to admit additional evidence presented by petitioner. The district court affirmed the decision of the board. Petitioner now appeals. She claims: 1) the decision of the board was not supported by substantial evidence; 2) the agency abused its discretion in not reopening the record; and 3) her actions did not constitute misconduct as a matter of law. **REVERSED AND REMANDED.**

Linda Cooper, HELP Legal Assistance, Davenport, for petitioner-appellant.

William C. Whitten and I. John Rossi, Des Moines, for respondents-appellees.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

DONIELSON, P.J. 67

Petitioner Dawn C. Carter was employed by respondent IBP, Inc. as a production worker from October 27, 1987, to January 15, 1988. Carter admits she had one unexcused absence in December 1987. She was discharged on January 15, 1988, for having a second unexcused absence. Carter maintains she did call in to report her absence due to illness on January 15, 1988, and the company made a mistake in finding she did not make such a call.

Carter filed a claim for unemployment benefits. The parties appeared at an administrative hearing where Carter was not represented by counsel. At the hearing she testified she had reported her absence on January 15 and she could present a telephone bill to prove she made the call. She claimed she had requested a copy of the bill from the telephone company but had not yet received it as of the time of the hearing. The hearing officer found Carter failed to call on January 15 and denied her unemployment benefits due to excessive absenteeism.

Carter appealed the decision of the hearing officer to the Employment Appeal Board and included a copy of her telephone bill which showed a call made to the employer on January 15. The board affirmed the hearing officer. The board refused to consider the new evidence because good cause had not been shown as to why it was not presented at the hearing and because admitting it would preclude the other parties from having an opportunity to address the

information or raise objections to it. Carter then obtained counsel and sought a rehearing. The board denied the request for the rehearing on the ground that Carter did not show good cause why the evidence was not presented at the hearing. Carter filed a petition for judicial review. The district court affirmed the decision of the board. The court found the board did not abuse its discretion and its decision was supported by substantial evidence.

Carter now appeals the decision of the court. She claims the decision of the board is not supported by substantial evidence. She contends the board relied solely on hearsay evidence and, while hearsay is admissible at administrative hearings, a finding of misconduct should not be based on hearsay evidence alone. Carter believes her testimony and the physical evidence of her telephone bill clearly refute the employer's hearsay evidence.

Carter also argues the board abused its discretion in not considering the evidence of her telephone bill. She contends she had a good reason for not producing it at the hearing. Carter had asked the telephone company for a copy of the bill, but had not yet received it when the hearing commenced.

Finally, Carter argues the agency erred as a matter of law in finding her absence on January 15 constituted misconduct. She states even if the evidence supports a finding of two unexcused absences in December and January, two unexcused absences should not be considered excessive.

Admissibility of Telephone Bill Carter claims the agency abused its discretion by not admitting and considering her phone bill when she appealed the hearing officer's decision and when she sought a rehearing of the board's decision. It is within the board's discretion whether additional evidence may be taken. Iowa Code § 10A.601(4) (1989). It may schedule a hearing for the purpose of taking new or additional evidence. 486 Iowa Admin. Code § 3.1(8)(c).

We conclude the agency abused its discretion in not admitting the phone bill when it reviewed the hearing officer's decision. Carter had testified regarding the contents of the bill and she testified regarding her delay in procuring a copy of the bill. The original bill was disposed of because its evidentiary value was not apparent at the end of January 1988. Carter's delay in obtaining a copy was to some extent due to the fact the bill was in her mother's name.

The central issue in this case was whether Carter called in to explain her absence on January 15, 1988. The phone bill may be dispositive proof of whether she called her employer in a timely fashion to avoid an unexcused absence.

This court recognizes the importance of complete and conclusive administrative hearings. However, the Iowa Employment Security Law was enacted for the purpose of minimizing the crushing burden of involuntary unemployment,

Iowa Code § 96.2 (1989), and it should be liberally interpreted and applied to achieve the legislative goal of minimizing the burden. Brumley v. Iowa Dept. of Job Service, 292 N.W.2d 126, 129 (Iowa 1980). In this matter we find the agency abused its discretion in not admitting Carter's evidence and ordering a hearing for the purpose of allowing each party to address and/or object to the evidence. See 486 Iowa Admin. Code § 3.1(8)(c), (13).

Our decision today regarding the admissibility of the phone bill negates the need to address Carter's other arguments. This matter is remanded to the agency for admission and consideration of Carter's phone bill.

REVERSED AND REMANDED.