FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

FRANCIS P. SORKILMOE,)

Petitioner-Appellant,) Filed September 20, 1979

vs.)

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2-62948

IOWA DEPARTMENT OF JOB SERVICE,)

Respondent-Appellee.)

Appeal from Cerro Gordo District Court - Ray E. Clough, Judge.

Petitioner appeals from judgment affirming respondent agency's denial of unemployment compensation benefits, asserting denial of due process through hearing officer's failure to conduct a full inquiry. - Affirmed.

Mark S. Schaffner, Mason City, for Appellant.

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

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Petitioner appeals from a judgment affirming the respondent agency's denial of unemployment compensation benefits, asserting that the agency hearing officer failed to conduct a full inquiry pursuant to rule and statute, and thus denied petitioner due process of law. We affirm.

After walking off his job, petitioner applied for unemployment compensation benefits. At a hearing before an agency hearing officer on his application, petitioner expressed his dissatisfaction at being paid no more than other workers despite his supplying all of the tools. The hearing officer's questioning of petitioner was brief, but concluded with the question, "Is there anything else that you'd like to add?" Petitioner responded negatively and then added a statement about initiating proceedings against his former employer for failure to pay overtime wages. The hearing officer concluded that petitioner quit his job without good cause attributable to his employer, and thus was not entitled to unemployment compensation benefits. That decision was affirmed by the agency appeals board. Petitioner then petitioned for judicial review and the district court refused to remand the case for further proceedings and affirmed the agency's denial of benefits.

Petitioner's only contention in this appeal is that since the agency hearing officer did not develop a full and complete record, petitioner was denied due process of law, and the district court erred by not remanding the case to an agency hearing officer for further proceedings. Petitioner bases this contention on the requirement of hearing officers to "inquire fully into the matters at issue." 370 I.A.C. § 6.2(5)(a). The gist of petitioner's claim appears to be that had the hearing officer conducted a full inquiry, she would have discovered that petitioner's actual reason for leaving his employment was that the employer had materially deviated from the work requirements of the employment contract with petitioner, a non-disqualifiable reason for leaving employment. 370 I.A.C. § 4.26(1). Since the hearing officer did not uncover this matter at issue at the hearing, petitioner contends that he was denied a full and fair hearing, and was thus denied due process of law.

The fundamental requirements of due process are notice and a meaningful opportunity to be heard or to defend. Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 902, 47 L.Ed.2d 18, 32 (1976); Carr v. Iowa Employment Security Commission, 256

N.W.2d 211, 214 (Iowa 1977). Accordingly, at a hearing to determine eligibility for unemployment compensation benefits, a hearing officer has an affirmative duty to make a full inquiry into all matters at issue. 370 I.A.C. § 6.2(5)(a). And when a claimant is not represented by counsel the hearing officer may be required to participate to a greater extent on behalf of the claimant than if the claimant had counsel. B. Schwartz, Administrative Law § 91, at 252-53 (1976). However, we refuse to conclude that a hearing officer's duty of inquiry into matters at issue requires the hearing officer to unearth every possible matter at issue as well.

The protections afforded by due process do not extend to the point of requiring a hearing officer to read the mind of a claimant to ascertain all possible matters on which a claim may be based. They also do not extend to requiring the hearing officer to fully prepare a claimant's case when the claimant is not represented by counsel. Petitioner always had the opportunity to be represented by counsel, section 17A.12(4), The Code 1977, and was fully informed of that right. By choosing not to be represented by counsel, however, petitioner did not gain the right to place the responsibility for failing to introduce a potential matter at issue on the shoulders of the hearing officer.

We agree that the hearing officer's questioning of petitioner was brief, however, included among the questions asked were the following: "[D]o you have anything else to add with respect to your separation from work?"; "Exactly why did you leave on the 30th of November?"; and "Is there anything else that you'd like to add?". We believe that any one of these questions gave petitioner the opportunity to assert his "change in the contract for hire" claim. We decline to transform petitioner's failure to assert a material claim into a successful due process challenge.

Petitioner relies on Shontz v. Iowa Employment Security Commission, 248 N.W.2d 88 (Iowa 1976), however, Shontz is inapposite to this case. In Shontz, the Iowa Supreme Court held that against the background of the failure of a hearing officer to take evidence on an issue that he was "sufficiently alerted . . . to" at the hearing, the Iowa Employment Security Commission erred by not directing the taking of further evidence on that issue. Id. at 91. In contrast, because this petitioner failed to alert the hearing officer to an issue, we find that his claim that the hearing officer made an insufficient inquiry into his case must fail as well.

AFFIRMED.