

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

AMANA REFRIGERATION, INC.,)

Petitioner-Appellee,)

vs.)

IOWA DEPARTMENT OF JOB SERVICE,)

Respondent-Appellant.)

Filed September 21, 1982 **6**

2-177

2-67223

Appeal from Iowa District Court - Ansel J. Chapman, Judge.

Respondent-agency appeals from the district court's decision on judicial review remanding this case to the agency for further proceedings, asserting: 1) that the agency found that neither misconduct nor a voluntary quit was established and that such finding was supported by substantial evidence in the record; and (2) that the agency's notice to the parties was adequate to apprise them of the issues involved in the hearing. **REVERSED.**

Walter F. Maley, Blair H. Dewey and Joseph L. Bervid, for respondent-appellant.

Iris E. Muchmore and Richard G. Hileman, Cedar Rapids, Iowa, for petitioner-appellee.

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

Respondent-agency, Iowa Department of Job Service, appeals from the district court's decision on judicial review remanding this case to the agency for further proceedings. The agency asserts: (1) that the agency found that neither misconduct nor voluntary quit was established and that such finding was supported by substantial evidence in the record; and (2) that the agency's notice to the parties was adequate to apprise them of the issues involved in the hearing. Petitioner-employer, Amana Refrigeration, asks us to affirm the trial court's remand or, in the alternative, to find the claimant disqualified from benefits on the merits of his case. We reverse.

The hearing officer found that claimant had worked for petitioner from May 28, 1978, to July 25, 1980, as an assembly man first-class. Claimant injured his elbow in a nonjob-related accident on or about July 7, 1980. Claimant had requested and been granted a medical leave of absence from July 7, 1980 to July 28, 1980, because of the elbow injury. Claimant's physician certified that claimant could return to work on July 30, 1980. The physician's certificate, however, was dated August 4, 1980. In the weeks immediately subsequent to claimant's injury, petitioner attempted to contact claimant at his residence, as reflected in corporate records, in order to obtain the necessary documentation of claimant's medical status. The notices stated that claimant's failure to provide his medical status would result in termination of employment. Claimant testified that he did not receive petitioner's letters as they were sent to the wrong address. Claimant was officially terminated on July 25, 1980.

On August 20, 1980, the agency claims deputy found that claimant's separation from employment was not attributable to the employer and accordingly withheld benefits for a ten week period. From this decision, claimant made an administrative appeal. The notice of hearing sent to the parties by the agency stated the issue was whether the claimant left for good cause attributable to the

employer. In making a decision, the hearing officer labelled the issue as one involving misconduct. In the body of the decision, the hearing officer stated that there was no evidence that claimant had quit his job or that he was guilty of misconduct. The agency appeal board subsequently affirmed the hearing officer's decision. Petitioner sought judicial review from that decision.

On judicial review the district court remanded the case to the agency for further proceedings. The district court found that the hearing officer did not adequately consider the issue of whether the claimant was deemed to have voluntarily quit and any applicable presumptions contained in the Iowa Administrative Code. Additionally, the district court considered the adequacy of notice given to the parties by the agency. Respondent appeals from the district court's decision to remand.

I. Scope of Review. Pursuant to Iowa Code § 17A.20 (1981), our review in this case is limited to a determination of whether the district court made errors of law when it exercised its power of review of the agency action under Iowa Code § 17A.19 (1981). Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979). Section 17A.19 limits the district court's review to a determination of whether the agency committed any errors of law specified in section 17A.19(8). Thus, to determine whether the district court properly exercised its power of judicial review "this court applies the standards of section 17.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. If the conclusions are the same, affirmance is in order. If they are not, reversal may be required." Jackson County, 280 N.W.2d 429-30. Section 17A.19(8) provides that the district court shall reverse or modify the agency action if such action is effected by error in the application of law or administrative rule, or is not supported by substantial evidence in the record made before the agency when the record is viewed as a whole.

II. Notice. Respondent asserts that the application of Iowa Code § 96.5(2) (1981) to the merits of this case by the agency did not violate Iowa Code § 17A.12(2)(c)(d) and § 17A.16(1) (1981), even though the notice of appeal did not advise the parties that section 96.5(2) (misconduct section) could be applied to the controversy. Petitioner alleges it was prejudiced because of the failure of notice. Since we conclude that section 96.5(2) was tried by the consent of the parties, we need not address the adequacy of notice.

The standard of notice to be given in contested case is set forth in Iowa Code § 17A.12(2) which provides:

The notice shall include:

- a. A statement of the time, place and nature of the hearing period.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
- c. A reference to the particular sections of the statutes and rules involved.
- d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application of a more definite and detailed statement shall be furnished.

Furthermore, 370 Iowa Administrative Code § 6.2(5)(d) provides:

The hearing shall be confined to evidence relative to the issues stated on the notice of hearing. An issue stated in terms of a voluntary leaving or a discharge shall be construed generally to be a single issue concerning the separation from employment so that evidence of either or both kinds of separation may be received. However, if an entirely new issue is raised at the hearing by a party, the hearing officer shall announce willingness to take testimony on the new issue and if the parties waive their right to notice and make no other objection, the hearing officer shall proceed to take such evidence.

The court in Green v. Iowa Department of Job Service, 299 N.W.2d 651, 655 (Iowa 1980), considered the factual situation where the claims deputy found the

claimant disqualified under section 96.5(2)(a) and on appeal the hearing officer modified the decision on the basis of section 96.5(1). Green complained that her notice of hearing referred only to "issues of absenteeism and tardiness, not insubordination, and therefore the hearing was improperly permitted to proceed."

Id. The court found, however, "she waived the alleged error by failing to object to the evidence on the 'new issue,' by joining issue on the misconduct question, and by failing to ask for adjournment and a rescheduled hearing." Id. We find such reasoning applicable in the present case.

Subsequent to the claims deputy's findings in the present case that claimant "left . . . employment for reasons unknown," claimant sought an administrative appeal. The notice of appeal, provided by the agency, reflected that § 96.5(1) was the statute "involved" in the appeal and that the matter of "[w]hether the claimant left for good cause attributable to the employer" was to be addressed at the hearing. At the hearing on appeal, the following colloquy occurred:

HEARING OFFICER: All right. Mr. McCormick, I would advise you, sir, that in a case involving a voluntary quit--when a man quits his job--the burden of proof rests on him to prove to the hearing officer that he quit his job for good cause attributable to the employer. He carries the burden, you understand. If a man were discharged for misconduct by the employer then the employer would carry the burden. Do you understand what I mean?

MR. McCORMICK: Um hum.

HEARING OFFICER: All right. The allegation before me is that you quit. Now is that so?

MR. McCORMICK: No, it ain't.

HEARING OFFICER: All right. I then would read another section of law to ya'll and that is a section of law involving misconduct. That section of law is Section 96.5-2 of the Iowa Code as amended and it reads: [96.5-2 was read into the record] [hearing officer to employer] Is it your position that the man quit his job or that he was discharged?

EMPLOYER: Our contention is that it is a voluntary quit.

HEARING OFFICER: All right. Mr. McCormick, we will—I will decide this matter at the close of the hearing. Now let's proceed with it and I will see where the burden of proof rests at the end of the hearing. . . .

Petitioner made no objection to any of the hearing officer's statements even though the hearing officer made it abundantly clear to the parties that section 96.5(2) could be applied to the controversy in allocating the burden of proof. Petitioner could have objected to such statements and requested a continuance. See 370 Iowa Administrative Code § 6.2(5)(d). Petitioner chose not to do so and now asks us on review to rectify its oversight. This we are unable to do.

Any prejudice which may have befallen petitioner was attributable to petitioner's failure to protect its interests in a timely manner. Accordingly, we find the potential applicability of section 96.5(2) to this controversy was properly addressed by the hearing officer.

II. Substantiality of the Evidence. Respondent asserts that there was substantial evidence to support the hearing officer's conclusion that "[t]he claimant was discharged . . . but was not guilty of any acts of misconduct." We agree.

Evidence is substantial if a reasonable person would find it adequate for reaching a decision. City of Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978). In making this determination, we are limited to the record made before the hearing officer. § 17A.19(7). The mere possibilities that the record would support another conclusion does not permit the district court or this court to make a finding inconsistent with the agency findings so long as there is substantial evidence to support it. City of Davenport, 264 N.W.2d at 312. Nor does the possibility of drawing two inconsistent conclusions from the evidence prevent an administrative agency's finding from being supported by substantial evidence. Cook v. Iowa Department of Job Service, 299 N.W.2d 698, 701 (Iowa 1980). The question is not whether there is sufficient evidence to warrant a decision the

agency did not make, but rather whether there is substantial evidence to warrant the decision it did make. See Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 464 (Iowa 1969).

Applying the above principles to the agency's findings of fact, we are convinced that the record on the whole substantiates the agency's finding that "[t]he claimant was discharged . . . but was not guilty of any acts of misconduct." On appeal respondent additionally urges that there is substantial evidence to support a finding of voluntary quit. We note that the hearing officer did state in his findings of facts "[t]here is no evidence of any nature whatsoever that he quit this job or that he intended to do so." While we do not condone the agency's omission of a finding on the issue of voluntary quit in its conclusion, we are able to "deduce what must have been his legal conclusions, and findings of fact." See Ward v. Iowa Department of Transportation, 304 N.W.2d 236, 239 (Iowa 1981). See also Hawk v. Jim Hawk Chev-Buick, Inc., 282 N.W.2d 84, 87 (Iowa 1979). We find there was a sufficient finding by the agency that the claimant did not voluntarily quit and that the record before the court substantiates that finding. Accordingly, we reverse the trial court's decision to remand the case to the agency and reinstate the decision of the board of appeals.

REVERSED.