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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

ROBERT J. MINOR,)

Appellee,)

Filed October 19, 1978

vs.)

IOWA DEPARTMENT OF JOB SERVICE)
and EAGLE IRON WORKS,)

Appellants.)

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2-61034

Appeal from Polk District Court - Luther Glanton, Judge.

Respondents appeal from a judgment of the trial court reversing a decision of the Job Service appeals board and granting petitioner unemployment benefits. Reversed and Remanded.

Walter F. Maley & Blair H. Dewey, of Des Moines, counsel for appellants.

Susan Brannmer & Robert C. Oberbillig, of Des Moines, counsel for appellee.

Heard by Donielson, Acting C. J., Snell and Carter, JJ.; Oxberger, J. takes no part.

DONNELSON, Acting C. J.

The respondents, employer Eagle Iron Works and Iowa Department of Job Services, appeal from judgment of the district court reversing the final decision of the Job Services Appeal Board disqualifying petitioner, Robert J. Minor, for unemployment compensation benefits because he was deemed to have voluntarily quit. Section 96.5(f), The Code 1977, defines a voluntary quitting that disqualifies an individual for benefits when "he or she has left his or her work voluntarily without good cause attributable to his or her employer." Section 370-4.25(4), Iowa Administrative Code, lists as a voluntary quit without good cause when "(t)he claimant was absent for three days without giving notice to employer in violation of company rule."

Minor was employed by Eagle Iron Works from March 15, 1973 to October 12, 1976. On October 6, 1976, he was arrested after work and incarcerated for a period of seven days. At the jail, Minor was granted only one phone call and was required to place that to his probation officer. He did not personally notify his employer of his absence, nor did he arrange for someone else to do so. Pre-trial Release telephoned the employer's personnel office on October 7, 1976. Dale Hartman testified that the caller identified himself as working with Pre-trial Release but did not state that Minor was incarcerated. However, Hartman was familiar with the Pre-trial Release program and freely gave out information requested.

The issue in this appeal is whether that call was adequate notice to the employer within the meaning of § 370-4.25(4), I.A.C., to prevent Minor's disqualification for benefits. The Job Services hearing officer and Appeal Board found that Minor had not adequately met his responsibility to notify the employer of his absence. The district court reversed, finding that the disqualification was "unsupported by substantial evidence in the record made before the agency when that record was viewed as a whole." Section 17A.19(3)(f), The Code. The scope of our review is similar, *City of Davenport v. Public Employees Relations Board*, 264 N.W.2d 307, 311-313 (Iowa 1978), and we reverse.

In reviewing the agency decision pursuant to this test, we must conclude that the final agency decision is supported by substantial evidence in the record before the Appeal Board when that record is viewed as a whole. Minor knew about the company

rule of automatic termination after three consecutive days of absence without notice. The personnel manager testified that he wasn't told that Minor was incarcerated during his conversation with Pre-trial Release, and he made no such assumption. He assumed Minor was "up for trial for some reason." Minor spoke with both his probation officer and his daughter by phone while he was incarcerated but did not request that they notify his employer.

While the issue is close and the evidence does not compel the result reached by the Job Service hearing officer, a reasonable mind could accept the evidence as adequate to support the administrative finding that Minor had not met his responsibility to notify his employer and thus voluntarily terminated without good cause attributable to the employer. Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *City of Davenport v. Public Employees Relation Board*, supra, at 311. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. *Reisner v. Board of Trustees of Fire Retirement System*, 203 N.W.2d 812, 814 (Iowa 1973).

We accordingly hold that the trial court erred in its order reversing Job Services. The decision of the trial court is reversed and the cause remanded for entry of an order pursuant to § 17A.19(8), The Code, affirming the agency action.

Reversed and Remanded.

Carter, J. specially concurs.

CARTER, J. (specially concurring)

I concur with the opinion of Donielson, J., which determines that the sufficiency of the notice given to the employer was a question of fact to be decided by the agency. But I feel there are other reasons why the result of the agency action should be upheld. Under § 56.50), The Code 1977, and the interpretations placed upon that statute, involuntary absence from work of the type involved in the present case is ground for disqualification from unemployment benefits. See Deere Mfg. Co. v. Iowa Employment Security Commission, 249 Iowa 1066, 1076-77, 90 N.W.2d 750, 757 (1958).

The issue was not approached from this point of view at the agency level because the hearing officer and appeal board applied a specific agency regulation (Iowa Adm. Code, 370--4.25(4)) pertaining to voluntary quitting. But the statute and other agency regulations provide for disqualification for involuntary quitting as well, if for causes not attributable to the employer. Deere Mfg. Co. v. Iowa Employment Security Commission, supra. Iowa Adm. Code, 370--4.25(16) specifically relates to absence from work due to incarceration of the employee as a basis for disqualification. Because under Deere Mfg. Co. v. Iowa Employment Security Commission, supra, the most significant factor in application of the statute (under which the regulations are promulgated) is whether the cause of absence from work was attributable to the employer, I find no basis for distinguishing between incarceration before or after conviction in determining whether the employee is disqualified.