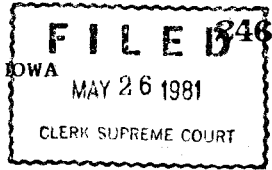


IN THE COURT OF APPEALS OF IOWA



RICHARD E. NOE,

)

Petitioner-Appellee,

)

vs.

)

IOWA DEPARTMENT OF JOB SERVICE, and)

SUPERIOR IDEAL CORPORATION OF IOWA,)

Respondents-Appellants.)

Filed May 26, 1981

1-63
2-65080

Appeal from Mahaska District Court - Dick R. Schlegel, Judge.

Respondents appeal from district court's order on judicial review reversing the agency's determination that petitioner-claimant was not entitled to unemployment insurance benefits asserting that the court improperly concluded the hearing officer's decision was not supported by substantial evidence. REVERSED WITH ORDER REINSTATING AGENCY'S DECISION.

Morse & DeGeest, Oskaloosa, Iowa, for petitioner-appellee.

Walter F. Maley, Blair H. Dewey and Joseph L. Bervid, Des Moines, Iowa, for respondent-appellant Iowa Department of Job Service.

Johnson, Bauerle & Hester, Ottumwa, Iowa, for respondent-appellant Superior Ideal Corporation.

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

PER CURIAM

Respondents, Iowa Department of Job Service (agency), and Superior Ideal Corporation of Iowa (employer), appeal from district court's order on judicial review reversing the agency's determination that petitioner-claimant, Richard E. Noe, was not entitled to unemployment insurance benefits. Respondents assert that district court improperly concluded the hearing officer's decision was not supported by substantial evidence. We reverse district court's judgment and order reinstatement of the agency's decision.

Claimant was employed by Superior Ideal until his discharge on January 3, 1979, for violation of a company rule permitting discharge of an employee for missing three consecutive days of work without reporting to the employer. A claims deputy awarded benefits to claimant. The employer appealed and the agency hearing officer denied benefits to claimant on the grounds that claimant voluntarily left his employment without good cause attributable to the employer under section 96.5(1), The Code. The agency appeal board affirmed the hearing officer's decision. Claimant thereafter filed his petition for judicial review in district court. In its ruling filed April 15, 1980, district court reversed the agency decision on the grounds that there was no substantial evidence that claimant had voluntarily terminated his employment and ordered remand of the case to the agency for a determination of eligibility for benefits. This appeal followed.

I. Scope of Review. Pursuant to section 17A.20, The Code 1981, our review in this case is limited to a determination of whether district court made errors of law when it exercised its powers of review of the agency action under section 17A.19. Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979); City of Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978). Section 17A.19 limits district court review to a determination of whether the agency committed any errors of law specified in section 17A.19(8). Thus, to determine whether 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 at 429-30.

Section 17A.19(8)(f) provides that district court shall reverse or modify the agency action if such action is "unsupported by substantial evidence in the record made before the agency when the record is viewed as a whole." The possibility of drawing two

inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. City of Davenport, 264 N.W.2d at 311. Evidence is substantial if a reasonable person would find it adequate for reaching a decision. Id. We are limited to the record made before the hearing officer. Section 17A.19(7).

II. Agency Findings. Based upon our review of the record before the agency, we conclude there is substantial evidence to support the following relevant facts. Sometime in early December, 1978, claimant had a conversation with his foreman, Jack Tucker, with respect to additional time off from work. Claimant testified before the agency that this conversation resulted in permission being granted by Tucker, as the representative of the employer, for a three-day absence from work on December 27, 28, and 29, 1978. Tucker testified before the agency that claimant did inform him sometime in early December that he had plane reservations to fly to Houston at about the time in question. He further testified that claimant stated that he was going even if he would be fired as a result. According to Tucker's testimony, he (the foreman) did not grant permission for the trip in question. He stated that he did not respond in any way to these comments from the claimant and simply walked away. Tucker testified that there was no further communication to or from claimant as to this subject except that about December 15, 1978, claimant told Tucker that he was going to the airline office and that "he said something about cashing them in."

III. The Applicable Law. We next turn to the applicable law. Because claimant conceded before the agency that no compelling personal reasons prompted the trip in question, section 96.5(1)(f) is not applicable. Section 96.5(1) disqualifies an individual for benefits "[i]f he or she left his or her work voluntarily without good cause attributable to his or her employer, if so found by the department." A "claimant . . . [who is] absent for three days without giving notice to the employer in violation of company rule" is presumed to have voluntarily quit without good cause attributable to the employer. Rule 370-4.25(4), I.A.C. The company rule at issue in this case is Shop Rule #9 which states: "Three (3) consecutive working days absence without reporting to the management constitutes resignation." (emphasis added).

The narrow question thus is whether there is substantial evidence to support the hearing officer's finding that claimant did not report to the management. The district court, in reversing the agency's decision, concluded that the agency had misinterpreted the issue and disqualified claimant on the ground that he did not receive permission

from the employer to leave. The district court believed, and we agree, that the critical issue is whether claimant was absent for three days without giving notice to the employer in violation of Shop Rule #9. But we do not agree that the agency did not adequately consider and deal with this issue. The reference in the agency decision indicating that "this matter turns on whether the claimant was granted permission to be off work between December 23, 1978 and January 3, 1979" was only the first step in a two-step decisional process. The agency believed (and we agree) that had the foreman granted the claimant permission to miss work, Shop Rule #9 would not have been applicable. Finding insufficient evidence that such permission had been granted, the agency then proceeded to apply the company rule pursuant to Rule 370-4.25(4), I.A.C. In so doing, we can only conclude from the decisional portion of the agency's findings that it found that the conversation in early December was insufficient to satisfy the requirements of Shop Rule #9 with respect to "reporting to management." In light of the record evidence suggesting (a) varying interpretations might have been placed upon the conversation in early December, (b) there was no subsequent confirming communication from claimant to the employer more proximate to the date of departure, and (c) there was subsequent reference to "cashing them in" with respect to a proposed trip to the airport on December 15, 1978, we find substantial evidence in the record, considered as a whole, to support the ultimate conclusion of the agency.

Because we conclude that the evidence properly permitted the hearing officer to find that claimant voluntarily quit under the governing law, we reverse district court's judgment and reinstate the agency's decision.

REVERSED WITH ORDER REINSTATING AGENCY'S DECISION.