

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 4 1986

CLERK SUPREME COURT

SHELDON PINSKY,

)

Petitioner-Appellant,

)

247

vs.

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FILED JUNE 4, 1986

IOWA DEPARTMENT OF JOB SERVICE,

)

6-41

85-1002

Respondent-Appellee.

)

Appeal from the Iowa District Court for Polk County (AA739) - George W. Bergeson, Judge.

Petitioner appeals the judicial review decision affirming a denial of unemployment compensation. **REVERSED AND REMANDED.**

Sheldon Pinsky, pro se.

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

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

248

Petitioner appeals the judicial review decision affirming a denial of unemployment compensation. He asserts that substantial record evidence fails to support a finding that his voluntary quit was without good cause attributable to the employer. We reverse and remand.

Sheldon Pinsky was an adjunct assistant professor with duties as an academic advisor. The dean of the engineering school unsuccessfully attempted to have his employment terminated after he counseled some students to pursue a course other than electrical engineering. Thereafter, his duties were somewhat altered and he was more closely supervised, but his salary was not reduced. An application for a promotion was refused without explanation. Respondent agency denied unemployment compensation on the ground that petitioner's written resignation was a voluntary quit without good cause attributable to the employer. The decision was affirmed on judicial review and this appeal followed.

I.

Pursuant to the Iowa Administrative Procedure Act, our review is limited to a correction of errors of law. Foods, Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 165 (Iowa 1982). In reaching our determination, we apply the standards set forth in section 17A.19(8) to the agency action and determine whether our conclusions are the same as the district court's. Gipson v. Iowa Dept. of Job Service, 315 N.W.2d 834, 836 (Iowa Ct. App. 1981).

Where the facts are disputed, we will adopt the factual determinations made by the agency as long as they are supported by substantial evidence. Temple v. Vermeer Mfg. Co., 285 N.W.2d 151, 160 (Iowa 1979). Where the facts are undisputed, however, the question becomes one of law. Green v. Iowa Dept. of Job Service, 299 N.W.2d 651, 655 (Iowa 1980). We are limited to the record before the hearing officer in making this determination. Id.

II.

249

The determinative question which must be answered in this case is whether Pinsky is disqualified from receiving benefits because he voluntarily quit his job without good cause attributable to his employer. See Iowa Code § 96.5(1) (1985). "Voluntary quit without good cause" is not statutorily defined, but the administrative regulations provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The burden of proof of establishing the separation as a voluntary leaving of employment without good cause attributable to the employer shall be the responsibility of the employer with whom the separation occurred.

370 Iowa Admin. Code § 4.25. The regulations set forth several reasons which constitute good cause, including a change in the contract of hire. For purposes of receiving benefits, the change of contract of hire "must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in the type of work, etc." 370 Iowa Admin. Code § 4.26(1).

Pinsky argues that good cause is established in the present case. Specifically, he claims that his contract of employment was substantially altered in two respects: (1) he was asked to perform job functions contrary to his professional training, and (2) he was subjected to unfair treatment in the handling of his application for promotion. The agency did not specifically address these claims. Rather, it determined that Pinsky quit because he was not promoted and this did not constitute good cause. It is argued on appeal that the agency failed to give proper consideration to Pinsky's reasons for quitting and substantial evidence does not support the agency's conclusion to deny benefits.

An employee may choose to leave employment for several reasons, with each reason important in the decision to quit. When the department is adequately informed of certain reasons for terminating employment, the employee is entitled to have each of the reasons considered. Taylor v. Iowa Dept. of Job Service, 362 N.W.2d 534, 540 (Iowa 1985).

In the present case the agency concluded that claimant did not quit for a reason that would permit him to receive benefits. However, the agency's fact finding and analysis do not adequately support this result. No consideration was given to claimant's stated reasons for leaving his employment. The evidentiary support for the reasons was not analyzed; nor did the department independently determine whether Pinsky's reasons constituted good cause within the meaning of the administrative regulations. The agency simply concluded that Pinsky's only reason for quitting was because he was not promoted and, thus, benefits should be denied. Absent consideration of the alleged changes in the contract of hire, this conclusion cannot be said to be supported by substantial evidence.

Pinsky may have quit, in part, because he was denied a promotion. Yet it does not follow that his stated reasons for quitting are without merit. If there was a substantial change in the contract of hire, then good cause would be established regardless of whether the denial of a promotion entered into his decision to quit.

Due to the limited record before this court, we are unable to determine as a matter of law whether Pinsky left his position because of a change in the employment contract. There is undisputed evidence that his responsibilities were altered and that no reasons were furnished for the denial of a promotion. However, we find little, if any, evidence concerning the terms of his employment contract. Thus, it is impossible to ascertain whether there was a substantial

alteration in the contract or whether the apparent mishandling of his application for promotion violated the terms of the contract.

We therefore remand for additional fact findings and a reasoned decision on whether there was a substantial change in Pinsky's contract of employment. The agency should further determine if Pinsky quit for the reasons he asserts and, if so, whether they constitute good cause attributable to the employer.

III.

The remaining issue before this court concerns the burden of proof. It is not clear from the decision of the hearing officer and department whether the burden was placed upon Pinsky or the employer. On judicial review, however, the district court specifically stated that the claimant had the burden of proof. This is an incorrect statement of law. Iowa Code section 96.6(2) provides in part:

The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5. However, the claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "i," and subsection 10.

(Emphasis added.)

Pursuant to this provision, the employer has the burden of proof in voluntary quit cases. The claimant only has the initial burden of proof in limited situations, none of which are applicable here. On remand the agency is directed to place the burden of proof upon the employer to establish that Pinsky quit without good cause attributable to the employer and therefore is disqualified from receiving benefits.

For the aforementioned reasons we reverse the decision of the district court denying claimant benefits and remand with instructions.

REVERSED AND REMANDED.