



IN THE COURT OF APPEALS OF IOWA

JOHN E. HARRIS,

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Petitioner-Appellant,

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Filed November 26, 1985

vs

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IOWA DEPARTMENT OF JOB SERVICE,

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5-412
85-240

Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County - Rodney Ryan,
Judge

Petitioner appeals the Iowa Department of Job Service's denial of his application to participate in a Department Approved Training program, and his disqualification of job service benefits. **AFFIRMED IN PART AND REVERSED IN PART**

Carolyn F. Coleman, Des Moines, for petitioner-appellant.

Blair H. Dewey, Walter F. Maley, and Joseph L. Bervid, Des Moines, for respondent-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

Petitioner appeals the Iowa Department of Job Service's denial of his application to participate in a Department Approved Training program, and his disqualification of job service benefits. We reverse in part and affirm in part.

Petitioner Harris has worked for Consolidated Freightways, as a truck driver, for the past five years. He has been laid off due to work shortage every year while at Consolidated. He is married and is the principal supporter of his wife and two small children.

Faced with a future of the same sporadic employment and financial instability, Harris decided to enroll at the Des Moines Area Community College (DMACC) for an AAS degree in industrial management and marketing. After enrollment, Harris applied with the Department of Job Service for Department Approved Training (D.A.T.). He also applied for weekly unemployment compensation benefits. The Job Service claims deputy disqualified Harris from D.A.T. status because his proposed training was academic rather than vocational in nature. The claims deputy also disqualified Harris from unemployment compensation benefits because Harris was found to be a full-time student. Harris appealed, appearing in his own behalf at the hearing. He was the only witness to testify at the hearing, but the hearing officer affirmed the claims deputy. Harris then exhausted all of his administrative remedies including an appeal of the final agency action to the district court. The district court, like the agency reviews before it, affirmed the denial of Harris's benefits and D.A.T. application. Harris now appeals the district court's decision. We reverse the D.A.T. issue and affirm the denial of unemployment benefits.

I. D.A.T. Eligibility. Iowa Code section 96.4(6)(a) (1983), provides that an unemployed individual shall not be denied weekly unemployment benefits

if he is participating in a training program with the approval of the director. 370 Iowa Administrative Code section 4.40(2) states, in part, that "[i]n addition, the nature of the training must be vocational rather than academic." The claims deputy and the hearing officer denied petitioner's application for a D.A.T. status on the basis the training he'd enrolled in was academic rather than vocational. However, 370 Iowa Administrative Code section 4.40(2), does not define "vocational" or "academic" and therefore, by itself, provides no guidelines on which the Job Service officers could have based their decision. The record shows that the hearing officer based his decision solely on 370 Iowa Administrative Code section 4.40(2). He concluded further that the training was academic rather than vocational, "insofar as it will train [petitioner] for a variety of management positions, and involves a substantial portion of classes which would be transferable toward a Baccalaureate Degree."

The record does not show, so we can only assume, that the hearing officer adhered to 370 Iowa Administrative Code section 4.39(12), when he denied petitioner's application. Section 4.39(12) of the Iowa Administrative Code provides, in part:

"Training" as used in these rules means vocational or technical training or retraining in schools or classes (including, but not limited to, field or laboratory work and remedial or academic or technical instruction incident thereto) that is conducted as a program designed to prepare individuals for gainful employment in recognized or new occupations. The term "training" does not include programs of instruction for an individual (including transfer credit programs of instruction given at community colleges) which are primarily intended to lead toward a baccalaureate or higher degree or training that has for its purpose the preparation of individuals for employment in occupations which require a baccalaureate or higher degree from institutions of higher education.

The hearing officer appears to have consulted this section because, as we noted previously, he mentioned that 16 classes out of a total of 29 offered for the AAS degree, were transferable toward a baccalaureate degree. However, the

record shows that petitioner Harris informed the hearing officer the same 16 courses involved in the industrial management program are also a part of the retail management program which has been approved for D.A.T. status. According to the petitioner, this information was provided by the Job Retraining Information Center. The hearing officer did not dispute this statement and, in response, admitted that he was not given very much guidance by the Administrative Code in deciding whether or not a particular program of training was academic rather than vocational.

The standard of review by the court is whether there is substantial evidence in the record, when that record is viewed as a whole, to support the agency's final action. If so, findings are binding on the Court. Hawk v. Jim Hawk Chevrolet-Buick, Inc., 282 N.W.2d 84 (Iowa 1979).

The decisions of the agency are final if supported by substantial evidence and correct conclusions of law. Davenport Water Co. v. Iowa State Commerce Commission, 190 N.W.2d 583 (Iowa 1971); Code of Iowa § 17A.19(8)(e)(f), (1985).

The agency action is supported by substantial evidence in the record, when that record is viewed as a whole pursuant to Code of Iowa section 17A.19(8)(f) (1985). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. General Telephone Co. v. Iowa State Commerce Commission, 275 N.W.2d 364, 370 (Iowa 1979).

We hold the hearing officer's decision is not supported by substantial evidence when the record is viewed as a whole. Aside from the apparent contradictory position this decision would establish with the retail management program, the hearing officer's decision is not a correct conclusion of law. 370 Iowa Administrative Code section 4.39(12) states in part that approved training means "... classes (including, but not limited to, ... academic ... instruction incident

thereto)" Section 4.39(12) later states that approved training does not include:

[P]rograms of instruction for an individual (including transfer credit programs of instruction given at community colleges) which are primarily intended to lead toward a baccalaureate or higher degree or training that has for its purpose the preparation of individuals for employment in occupations which require a baccalaureate or higher degree from institutions of higher education.
(Emphasis added.)

The record clearly shows that petitioner's training was designed toward an AAS degree. The instruction was not primarily intended to lead toward a baccalaureate degree, nor does his desired occupation require a baccalaureate degree. It is also relevant to note that one of the requirements for D.A.T. status is that the training "relate to an occupation or a skill for which there is, or expected to be in the immediate future, reasonable opportunities in the locality where the claimant is residing" 370 Iowa Admin. Code § 4.39(4). Petitioner testified at the hearing that his immediate goal was to return to Consolidated Freight as a dispatcher or operations manager or possibly a salesman. The record shows, when viewed as a whole, that petitioner selected a program of instruction that could prepare him for gainful employment in a recognized or new occupation; and, that he could reasonably expect his new training to qualify him for a new position in the immediate future with his former employer. We hold that the Department Approved Training program under chapter 370 of the Iowa Administrative Code was created to aid such an individual. We cannot say that merely because the courses in question are transferable toward a baccalaureate degree, petitioner should be denied his application for D.A.T. status.

II. Unemployment Benefits. Petitioner was denied unemployment compensation benefits because the hearing officer determined that he was not available for work because of his school load. The hearing officer based his decision on petitioner's testimony that he would have to drop out of school and search

for a full-time job should his application for D.A.T. be denied. The record supports the hearing officer's conclusion. Petitioner responded to a question as to his availability for work while going to school by saying:

It's going to depend on this hearing. If—if I get the D.A.T., I'll just stay with school strictly and devote all my attention to that I thought at the time I applied for D.A.T. I had pretty lofty ideas about being able to work and go to school both, but I'm not as smart as I thought.

The agency found, because of this statement, petitioner was unavailable for work. We are bound by the agency's finding of fact if they are supported by substantial evidence. Evidence is substantial if a reasonable mind could accept it as sufficient to reach the same findings. The fact that a different conclusion could have been reached is irrelevant. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269, 270 (Iowa 1982). However, neither we nor the district court is bound by the agency's legal conclusions. Green v. Iowa Department of Job Service, 299 N.W.2d 651, 655 (Iowa 1980).

Iowa Code section 96.4(3) provides that eligibility for benefits requires that the individual be available for work. The claimant has the burden of showing that he or she is available. New Homestead v. Iowa Department of Job Service, 322 N.W.2d at 270. Based upon the record before us, we cannot say the agency's decision is unsupported by substantial evidence. Therefore, we affirm the agency's denial of unemployment benefits, and reverse the agency's denial of petitioner's application for D.A.T. status.

AFFIRMED IN PART AND REVERSED IN PART.

Hayden, J., concurs; Danielson, P.J., dissents.

DONIELSON, P.J. (dissenting)

I respectfully dissent.

The claimant, a truck driver by profession, is enrolled in an industrial management and marketing degree program. The claimant hopes to take on a managerial position after successful completion of his courses. Sixteen of the twenty-nine classes taken by claimant are transferable to a baccalaureate degree. Such courses include: Psychology and Human Rights, Algebra, and a Psychology Seminar. Iowa Administrative Code section 370-4.40(2) provides the department-approved training program for rehabilitative purposes shall be vocational, not academic, in nature.

There is no doubt in my mind this claimant's degree program was primarily academic because a majority of the courses he took apply to a baccalaureate degree. In addition, training for management-type positions is not, in my view, vocational in nature. I think an undesirable precedent could be set by this case because future claimants could take a majority of courses which are academic but still qualify for D.A.T. status. Such a result is an abuse of the system.

Section 4.39(12) provides that D.A.T. status should not be available to persons who seek an occupation where academic training is necessary. "Training" is given a flexible definition because it is difficult to categorize certain educational programs as being either academic or vocational in a black and white fashion. Given that a gray area exists in determining whether a program is primarily academic or vocational, I believe the training in this case is more academic, rather than vocational, oriented and find substantial evidence to support the agency's decision.