IN THE COURT OF APPEALS OF IOWA

No. 4-076 / 93-0917

FILED
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CLERK SUPREME COURT

PIZZA HUT OF AMES, INC.,

Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD,

Respondent-Appellee,

JAMES L. RAHFALDT,

Intervenor.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the Employment Appeal Board's decision awarding James L. Rahfaldt unemployment benefits. **REVERSED AND REMANDED.**

Deborah S. Krauth of Newbrough, Johnston, Brewer, Maddux & Nadler, Ames, for appellant.

William C. Whitten, Employment Appeal Board, for appellee.

Heard by Donielson, P.J., Sackett, J., and Peterson, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

PETERSON, S.J.

Pizza Hut of Ames, Inc., employed James L. Rahfaldt as its area manager from May 21, 1990, until March 3, 1992. In October 1991, after the employment relationship began to deteriorate, Rahfaldt requested that any meetings with his employer be tape recorded. The employer denied the request.

In November 1991, Rahfaldt called an attorney regarding the filing of a discrimination complaint against his employer. He subsequently filed a complaint with the Iowa Civil Rights Commission which alleged discrimination because of mental or physical disability. During the investigation of the complaint, Rahfaldt tape-recorded a conversation with the employer's president without his knowledge.

The employer became aware of the recording and asked Rahfaldt if he had recorded conversations. Pursuant to legal advice, Rahfaldt refused to answer. On February 21, 1992, the employer suspended Rahfaldt for insubordination based on his failure to answer the questions about the tape recording. On March 3, Rahfaldt was terminated from employment because he failed to tell his employer if he had tape-recorded conversations in violation of the employer's instructions.

Rahfaldt filed a claim for unemployment benefits. The Employment Appeal Board concluded that Rahfaldt was entitled to unemployment benefits. They held that the

taping of conversations was a protected activity under 42 U.S.C. § 2000e-3 (1964) regarding discrimination claims and hence not disqualifying misconduct. They also held that Rahfaldt's refusal to answer the employer's question about the taping was consistent with the advice of counsel and was not disqualifying misconduct. Pizza Hut's timely application for rehearing was denied.

On December 11, 1992, Pizza Hut filed a petition in the district court for judicial review challenging the board's decision awarding unemployment benefits to Rahfaldt.

The district court affirmed the board's decision. The court found, however, that section 2000e-3 was inapplicable because Rahfaldt's complaint did not allege discrimination based on race, color, religion, sex or natural origin.

The court then held that an employer's directive must have a reasonable relationship to the employer's business interests before noncompliance can be considered disqualifying conduct. See Myers v. Iowa Dep't of Job Serv., 373 N.W.2d 507, 510 (Iowa App. 1985); and Flesher v. Iowa Dep't of Job Serv., 372 N.W.2d 230, 234 (Iowa 1985). The court then held that it was axiomatic that any disqualifying misconduct must have a reasonable relationship to the performance of the employee's job duties. Based on this, the court then determined that the fact (as found by the board) that Rahfaldt was following his attorney's advice and that he was tape-recording conversations for use in a case under chapter 601A of the

Iowa Code militates against a conclusion that he was acting willfully and intentionally in disregard of Pizza Hut's interests. The district court further found that the record demonstrated no reasonable relationship between Rahfaldt's failure to answer the question about recording conversations and the competent performance of his job responsibilities. Accordingly, the court found that Rahfaldt's conduct did not disqualify him from receiving unemployment compensation.

Pizza Hut filed a motion to amend the court's findings of fact and conclusions of law pursuant to Iowa Rule of Civil Procedure 179(b). The district court denied this motion and the Pizza Hut filed a notice of appeal.

Pizza Hut contends the district court erred when it failed to remand the case to the Employment Appeal Board and further that the claimant was guilty of disqualifying misconduct by recording the conversations in direct contravention of the employer's orders. The Employment Appeal Board contends Pizza Hut did not raise or preserve the issue concerning remand because it did not file a motion pursuant to Iowa Rule of Civil Procedure 179(b). It also contends that the Employment Appeal Board did not err when it found that the surreptitious recording of a meeting was not misconduct.

Judicial review of agency determinations regarding unemployment compensation benefits are governed exclusively by the Iowa Administrative Procedures Act. Iowa Code

§§ 17A.19; 96.6(3) (1991). The scope of review of cases arising out of the Iowa Administrative Procedures Act is limited to corrections of errors of law. Gilliam v. Atlantic Bottling Co., 453 N.W.2d 230, 231 (Iowa App. 1990). This review encompasses a review of the entire record and is not limited to the agency's findings. Id. Appellate review of a district court judgment in a judiciary review proceeding requires a determination of whether the district court correctly applied the law. Sioux City Brick & Tile Co. v. Employment Appeal Board, 449 N.W.2d 634, 637 (Iowa 1989). This review requires the appellate courts to apply the standard of Iowa Code section 17A.19(8) to the agency action. If the conclusions match those of the district court, it is affirmed; if not, the case is reversed or modified. Sioux City, 449 N.W.2d at 637-638.

If the district court finds that the administrative agency committed an error of law, then it may remand the matter back to the agency for an appropriate final disposition. Des Moines Ind. Comm. Sch. Dist. v. Dep't of Job Serv., 376 N.W.2d 605, 611 (Iowa 1985). When the resolution of a controversy has been delegated to an administrative agency, the district court has no original authority to declare the rights of parties or the applicability of any statute or rule. Public Employment Relations Board v. Stohr, 279 N.W.2d 286, 290 (Iowa 1979).

In this case, the district court found that the administrative agency committed an error at law by relying on section 2000e-3, which was inapplicable in this situation. The trial court determined the correct law and determined the rights of the parties by applying this proposition of law to the facts as developed by the administrative agency. We believe this matter should have been remanded back to the administrative agency for their consideration under the appropriate propositions of law.

The Employment Appeal Board contends that Pizza Hut did not preserve its error in this regard because it did not file a 179(b) motion. The board did not support this contention with any citation of authority, and we deem that argument waived. Iowa R. App. P. 14(3). Both Pizza Hut and the Iowa Employment Appeal Board included divisions in their briefs in essence requesting that this court determine if Rahfaldt's conduct constituted misconduct. Inasmuch as we have determined that this case should be remanded to the administrative agency, it is not necessary that we consider this issue.

The decision of the district court in this matter is hereby reversed and this matter is remanded to the district court for referral to the administrative agency for further consideration under the appropriate propositions of law. We do not retain jurisdiction. Costs of this appeal are assessed to appellee.

REVERSED AND REMANDED.