FILED
MAY 24 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-182 / 89-1531

LAWRENCE D. MILLER,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD and **WOODWARD STATE HOSPITAL,**

Appellees.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Miller appeals from a district court decision upholding the agency's denial of unemployment benefits. **AFFIRMED.**

Lois K. Cox, University of Iowa, College of Law, Clinical Law Programs; and Steve Heisdorffer, Student Legal Intern, Iowa City; for appellants.

William C. Whitten, Des Moines, for appellee.

Heard by Donielson, P.J., and Hayden and Sackett, JJ.

HAYDEN, J. 153

Lawrence D. Miller was employed as a residential treatment worker at Woodward State Hospital for four years. In August 1987, Miller suffered a heart attack while at work. When he returned to work in November of 1987 he was fully recovered. He suffered a second heart attack on June 9, 1988. Angioplasty was performed on that date and Miller suffered his third attack during the procedure. On June 13, 1988, he returned to work with a full release from his physician. Upon his return he was transferred to another unit, which required him to perform more physical tasks, including heavy lifting. Miller worked for seven days. On June 21 he experienced another problem with his heart. When he returned to work he had a note from his physician which limited him to "light duty, low stress" work. He was informed by his employer no work was available because of his lifting restriction. The employer granted Miller a medical leave of absence until August 23, 1988.

On July 17, 1988, Miller applied for unemployment benefits. The job service representative denied him benefits. Following a hearing, the administrative law judge affirmed the denial. The board affirmed the denial and the district court upheld the agency's decision. Miller now appeals.

Miller claims the agency erred as a matter of law by requiring Miller to prove his job caused his heart

condition. Miller states he is only required to show his job aggravated his heart condition, and that he met his burden by introducing a doctor's note that states "cardiac condition is aggravated by present work situation." Miller also claims the agency incorrectly defined "recovery" in Iowa Code section 96.5(1)(d) as meaning that the employee must be able to perform all of the job duties for which he was hired. We affirm.

Our review is confined to the correction of errors of law. Polk County Drainage Dist. No. 4 v. Iowa Natural Resources Council, 377 N.W.2d 236, 239 (Iowa 1985). Review of the employment appeal board decision is at law and not de novo. Cook v. Iowa Dep't of Job Serv., 299 N.W.2d 698, 701 (Iowa 1980); Messina v. Iowa Dep't of Job Serv., 341 N.W.2d 52, 54 (Iowa 1983).

Judicial review of administrative agency decisions is governed by the Iowa Administrative Procedures Act (IAPA) chapter 17A. Section 17A.20 provides for appellate review. When reviewing an agency decision, we apply the standards of Iowa Code section 17A.19(8). Northwestern Bell Tel. Co. v. Iowa State Commerce Comm'n., 359 N.W.2d 491, 495 (Iowa 1984). The burden rests upon the petitioner to show that the agency's policy choices were unreasonable. We defer to the agency's expertise. Id. at 497.

Miller relies upon the provisions of 96.5(1)(d) of the Code of Iowa which provides an individual shall not be

disqualified for voluntarily leaving work if the division finds that:

> The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the division, provided the individual is otherwise eligible.

Miller asserts he terminated employment because factors or circumstances related to his employment caused or aggravated his heart condition. Therefore, he maintains, his termination is involuntary and for good cause attributable to Woodward. We do not agree.

Our review of the agency's findings of fact bind us if substantial evidence supports them. Wills v. Employment Appeal Bd., 447 N.W.2d 137, 139 (Iowa 1989). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. Id. The agency's legal conclusions do not bind us; we are free to correct misapplications of the law. Id.

The district court concluded in its findings of fact the statement from Miller's physician explaining Miller's cardiac condition was aggravated by his present work situation was not sufficient medical evidence to show a relationship between the heart condition and Miller's employment.

We affirm the trial court's findings. There is sufficient evidence to support the findings of the Employment Appeal Board Miller's disability was neither caused nor aggravated by his employment. Miller's assertion the district court erroneously placed the burden of proof on the claimant is incorrect. The plaintiff has the burden to establish the disability was either caused by or aggravated by his employment. McNary v. Kiowa Corp., No. 89-473, slip. op. at 4 (March 21, 1990).

Miller was off work because of a nonwork-related illness. His physician advised him to take time off from work. On two occasions Miller returned to work with no work restrictions. When he returned on June 27, 1988, his doctor had placed a twenty pound weight lifting restriction and a low stress job restriction on his return to work.

Woodward had no job available for him with these restrictions. This court held in Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985), a nonwork-related injury requires a full and complete recovery in order for the exception of § 96.5(1)(d) to apply. Miller did not return to work with a full and complete recovery. He has failed to carry his burden of establishing he meets the requirements of § 96.5(1)(d).

AFFIRMED.