

IN THE COURT OF APPEALS OF IOWA

No. 3-558 / 93-437

**FILED**

DEC 29 1993

CLERK SUPREME COURT

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**JEFFREY G. GRANDMONT,**

Petitioner-Appellant,

vs.

**BOYER'S DIESEL and EMPLOYMENT APPEAL BOARD,**

Respondents-Appellees.

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Appeal from the Iowa District Court for Pottawattamie County, Charles Smith, Judge.

Petitioner appeals from the district court's decision affirming an agency action by the Employment Appeal Board.

**AFFIRMED.**

Jennifer Nelson of Legal Services Corp. of Iowa, Council Bluffs, for appellant.

William C. Whitten, Employment Appeal Board, Des Moines, for appellees.

Considered en banc.

SACKETT, J. 000162

Petitioner-appellant Jeffrey Grandmont appeals from a district court decision affirming the Employment Appeal Board's decision finding he voluntarily quit his job and was overpaid unemployment benefits. Jeffrey contends there is not substantial evidence supporting the decision. The agency relied on the testimony of Jeffrey's employer in making a factual determination. Jeffrey contends in viewing the record as a whole the fact finder erroneously concluded the employer was not a truthful witness. We affirm.

Our review is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that determination this court applies the standards of Iowa Code section 17A.19(8) (1991) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). We review the entire record not just the agency's findings. See Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before

the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Id.

Jeffrey was a mechanic at Boyer's Diesel. He furnished his own tools and his employer did not assume responsibility for the tools. Jeffrey was not at work and his employer needed glue out of Jeffrey's tool box. The tool box was locked. When Jeffrey returned to work, the employer directed Jeffrey to leave the box unlocked even if he were not working. Jeffrey did not agree with this directive and communicated his position to his employer. The employer told Jeffrey, "if you won't leave the box unlocked, hit the door." Jeffrey left the premises. He did not tell his wife he quit. On the day of Jeffrey's separation, the employer called Jeffrey's wife and asked her when Jeffrey was coming back to work.

The primary issue in this case is whether Jeffrey quit or whether he was discharged. The agency found he quit. The employer has the burden to prove the employee quit

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without cause attributable to the employer. See Taylor v. Iowa Dep't of Job Serv., 362 N.W.2d 534, 541-42 (Iowa 1985).

There was a conflict in the testimony. The agency found the employer's testimony more credible. Jeffrey argues there is not substantial evidence to support this credibility finding. He points to several alleged inconsistencies in the employer's testimony. The agency's fact findings are binding on us if supported by substantial evidence, and we construe the agency's findings broadly and liberally. See Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity, we will construe the findings to uphold, rather than defeat, the agency's findings for it is not our place here to weigh the evidence of credibility of the witnesses. See id. We reject Jeffrey's argument that the credibility findings of the agency are not supported by the evidence.

We, therefore, look to the evidence to determine whether it supports the agency's finding Jeffrey quit. Jeffrey contends he was discharged. The evidence from Jeffrey's wife that the employer wanted to know when Jeffrey was to return to work supports a finding there was not intention on the employer's part to discharge Jeffrey. The employer established a prima facie case of disqualification. The burden to produce evidence to avoid disqualification shifted to the claimant. See Norland v.

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Iowa Dep't of Job Serv., 412 N.W.2d 904, 911 (Iowa 1987).

Jeffrey introduced no evidence other than his contention that he was discharged. There is no error. We affirm.

**AFFIRMED.**

All judges concur except Schlegel, J., and Oxberger, C.J., who dissent.

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SCHLEGEL, J. (dissenting)

I respectfully dissent.

I believe that "hit the door," in the context in which it was used, was properly construed by the employee, to be "you're fired."

To find that the claimant quit, simply because the employer called the wife to find out when he was to return to work, does not add to the record in support of the finding of the agency.

The decision, in my opinion, was wholly unsupported by the evidence. I would reverse.

Oxberger, C.J., joins this dissent.