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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBIN M. BARNES,	)	
Petitioner-Appellant,	)	Filed September 6, 1984
vs.	)	
IOWA DEPARTMENT OF JOB SERVICE AND AASE HAUGEN HOMES, INC.,	)	4-237 83-1576
Respondents-Appellees.	)	

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Appeal from the Iowa District Court for Winneshiek County - Dennis D. Damsgaard, Judge.

Petitioner appeals from the district court's affirmance of the respondent-agency's decision denying her claim for unemployment benefits. REVERSED AND REMANDED.

John L. Brown of Legal Services Corp., Des Moines, Iowa, for petitioner-appellant.

Walter F. Maley, Blair H. Dewey, and Joseph L. Bervid, Des Moines, Iowa, for respondents-appellees.

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

HAYDEN, J.

Petitioner appeals from the district court's affirmance of the respondent-agency's decision denying her claim for unemployment benefits.

The petitioner was employed full time as a nurse's aide for Aase Haugen Nursing Home until November 13, 1982. Her job involved considerable lifting of disabled nursing home residents. On September 21, 1982, the petitioner injured her back while at work. The doctor who examined the petitioner recommended that she find other employment because her job involved too much lifting. The petitioner informed her supervisor of the doctor's recommendation. The supervisor contacted the doctor to seek a work release slip for the petitioner. The doctor wrote a note stating that the petitioner could return to work if she had assistance in lifting.

Although the petitioner received assistance in lifting after she returned to work, she continued to suffer back pain. The petitioner talked to her supervisor about the possibility of transferring to another department where she would not have to do as much lifting, but the supervisor told her that she could not get a job in that department because there were no openings. The petitioner also talked to the head of the other department but was told once again that there were no job openings there.

After about two weeks back on the job, the petitioner submitted her written resignation to the supervisor and the administrator of the home. The letter stated that she was leaving due to a recent injury and her increasing work load. After the petitioner quit her job, she received two letters from her doctor which stated her back injury was a result of her work. The doctor stated in one letter that he believed that it was in the petitioner's best interest to quit her job.

The petitioner applied for unemployment benefits and the nursing home resisted her claim, asserting that the petitioner had voluntarily quit without good cause attributable to the employer. A claims deputy for the respondent-agency

issued a decision disqualifying the petitioner from receiving unemployment benefits. The petitioner appealed and a hearing officer ruled that the petitioner left her employment as a result of the injury she suffered on the job and thus was allowed to receive benefits. The nursing home appealed the hearing officer's decision to the agency's appeal board. The appeal board reversed the hearing officer's decision by a 2-1 vote. The majority concluded that the petitioner had a duty to talk to the administrator of the nursing home about a possible job transfer before leaving her employment and that the petitioner had failed to do so. The appeal board determined that the petitioner was overpaid $1,615.62.

On judicial review the district court determined that the agency findings were supported by substantial evidence and that there were no errors of law.

Our review under Iowa Code section 17A.20 is limited to a determination of whether the district court made errors of law when it exercised its power of review of agency action under section 17A.19. Woods v. Iowa Department of Job Service, 315 N.W.2d 838, 840 (Iowa Ct. App. 1981). In order to make that determination this court applies the standards of section 17A.19(8) to the agency decision to determine whether this court's conclusions are the same as those of the district court. Peoples Memorial Hospital v. Iowa Civil Rights Commission, 322 N.W.2d 87, 91 (Iowa 1982). We are bound by the agency's findings 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 also have been reached is irrelevant. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269, 270 (Iowa 1982).

The facts of the present case are not disputed. The issue is whether under the set of facts presented petitioner is disqualified from receiving benefits because she left her employment without good cause attributable to her employer. See Iowa Code section 96.5(1); Walles v. Iowa Employment Security Commission, 219 N.W.2d 539, 540 (Iowa 1974).

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Iowa law is well settled that leaving work due to an injury suffered on the job is a quit with good cause attributable to the employer. 370 Iowa Administrative Code § 4.26(17). In Raffety v. Iowa Employment Security Commission, 247 Iowa 896, 76 N.W.2d 787 (1956), the claimant injured his back on the job and was hospitalized for approximately two months. His doctor advised him that he could not do the lifting required in his regular job, but that he could do light work. Claimant returned to work and requested lighter work from his employer's foreman. Since no light work was available, claimant left. Id. at 897, 76 N.W.2d at 787-88. The supreme court held that claimant left work involuntarily with good cause attributable to his employer. Id. at 899-900, 76 N.W.2d at 789.

The rule established in Raffety was relied on by the supreme court in McComber v. Iowa Employment Security Commission, 254 Iowa 957, 119 N.W.2d 792 (1963). The claimant in that case was required to work with woolen garments. She developed a nervous condition which was aggravated by contact with wool and resulted in dermatitis on her arms. She asked her supervisor if she could be transferred to another job where her arms would not come in contact with the wool but was told that they could not be transferring her all over the shop. Id. at 958-59, 119 N.W.2d at 793-94. Claimant left her employment and the supreme court held that she was entitled to unemployment benefits. Id. at 963, 119 N.W.2d at 795-96.

In Ellis v. Iowa Department of Job Service, 285 N.W.2d 153 (Iowa 1979), the claimant, a housekeeper, informed her employer that she was allergic to evergreen trees. Nevertheless her employer erected a natural Christmas tree. Citing McComber and Raffety, the court held that claimant's quitting her job was for good cause attributable to her employer. The court concluded there was no evidence in the record to support the agency's position that claimant could have worn a mask or stayed in another room of the house. Id. at 156-57.

We conclude that the present case is controlled by Raffety. The agency argues, however, that petitioner should be disqualified from receiving benefits because she did not request a transfer from the nursing home administrator. It appears from the record and from the factfindings made by the agency that the administrator was the only person authorized to transfer employees between departments. However, it is clear that petitioner discussed her back problems with her supervisor and requested a transfer to the Activity Center of the home where she would not be required to do any lifting. She also conferred with the head of the Activity Center about a transfer and was told there were no openings. Furthermore, petitioner submitted a letter of resignation two weeks before leaving which stated that she liked her job but was forced to resign because of her back injury and the increasing work load. The administrator of the home was, therefore, aware of the problem two weeks before petitioner left work.

We do not believe that petitioner was required to take any further steps to seek a transfer. Although the two persons with whom petitioner discussed a transfer did not have the authority to place her in another department, they were nonetheless managerial personnel. An employee should be able to discuss an employment problem with his or her supervisor and expect the supervisor to either relay the information or direct the employee to the appropriate person if the supervisor is unable to help. The evidence in the record shows that petitioner's supervisor told her there were no openings which did not require lifting. The supervisor did not state that she had no authority to make a transfer, nor did she tell petitioner to see the administrator about the problem. Petitioner testified that after consulting two supervisory employees and being informed that no suitable work was available, she saw no point in pursuing the matter. It was reasonable for petitioner to rely on the supervisor's statements and to believe that they were given on behalf of the nursing home. We note that in both the Raffety and McComber cases the facts indicate those claimants discussed their

employment problems with a foreman or supervisor, not with a person in upper level management. Raffety at 897, 76 N.W.2d at 788; McComber at 959, 119 N.W.2d at 794.

The agency's reliance on Spence v. Iowa Employment Security Commission, 249 Iowa 154, 86 N.W.2d 154 (1957), is misplaced. In that case the claimant was injured at work but did not report the injury to his foreman. He was absent from work for a full month without ever requesting or receiving a leave of absence. The present case is clearly distinguishable from Spence.

The findings of fact of the agency state that petitioner did not leave work on the advice of a physician. There is evidence in the record supporting this finding, although we note that petitioner had originally been advised by her doctor not to return to work after injuring her back. Petitioner also offered into evidence a letter written by her doctor advising her not to continue working, but she did not receive this letter until after giving notice of her resignation. In any event, the absence of a physician's recommendation was not a disqualifying factor in Ellis. Ellis v. Iowa Department of Job Service at 156.

Although there is substantial evidence to support the fact findings of the agency, those findings do not justify the legal conclusion reached. The district court erred in not correcting the agency's misapplication of the law. The decision of the district court is, therefore, reversed and the case is remanded to the agency for an award of benefits.

REVERSED AND REMANDED.