

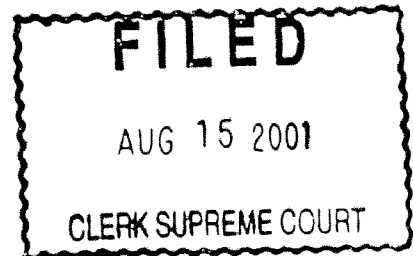
IN THE COURT OF APPEALS OF IOWA

No. 1-136 / 00-1137
Filed August 15, 2001

MED-STAFF, INC.,
Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD
and **PAULA K. WRIGHT,**
Respondents-Appellees.



Appeal from the Iowa District Court for Polk County, George Bergeson,
Judge.

Med-Staff, Inc. appeals from the district court's ruling on judicial review
affirming the Employment Appeal Board's decision awarding a former employee
unemployment benefits. **AFFIRMED.**

Jeffrey L. Halsey, Davenport, pro se, for appellant.

Richard R. Ramsey, Des Moines, for appellee board.

James Hood, Davenport, for employee-appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

PER CURIAM

The pro se petitioner-appellant employer, Med-Staff, Inc., appeals the district court's ruling on judicial review which affirmed the respondent-appellee, Employment Appeal Board's, decision awarding unemployment benefits to a former employee. The employer claims substantial evidence does not support the Board's findings the employee's injury was work related and she quit for good cause attributable to the employer.

Background

Med-Staff is a temporary staffing agency. Paula Wright worked through Med-Staff as a certified nursing assistant in various nursing homes from October 1998 to April 1999. Wright claimed she injured her back lifting a resident at work on April 6, 1999. After surgery for a herniated disc and the subsequent recovery period, Wright returned to Med-Staff for work on June 17, 1999. Her doctor restricted her to lifting no more than twenty pounds, no bending or pushing, and no more than four hours per day initially, to increase as tolerated. Wright's usual work in the nursing homes involved lifting more than twenty pounds, repeated bending and pushing, and working a normal eight-hour shift.

Wright wrote Med-Staff on July 1, 1999, stating, "I'm willing to work within my restrictions of 4 hrs per day. . . . Unless you can find at least 40 hours per week for me, I will have to look for work else where[sic]." Med-Staff had offered Wright a position which initially would be only a three-hour shift on alternating Sundays, after nine hours of orientation and training. Wright claims she did not accept the position. Med-Staff did not discover Wright did not take the position until the client nursing home called Med-Staff to report Wright did not attend the

scheduled training. Under Med-Staff policies, "[a]ny employee who does not call or show up at all for a given assignment, will be considered to have initiated a 'voluntary resignation without notice.'"

Agency and court proceedings

Wright filed a claim for unemployment benefits. Iowa Workforce Development denied Wright's claim. She appealed. After contested case proceedings including an evidentiary hearing, the administrative law judge reversed the denial of unemployment benefits. Based on findings "[Wright] experienced extreme pain in her back after lifting a resident at work" and "[Med-Staff] did not offer the claimant with [sic] comparable work that met her restrictions" and applying Iowa Administrative Code rule 871-24.26(6), the ALJ concluded Wright left her employment with Med-Staff with good cause attributable to the employer. Med-Staff appealed. The Employment Appeal Board summarily affirmed the ALJ. Med-Staff sought judicial review. After oral argument from the parties, the district court summarily affirmed the Board's decision. Med-Staff appeals.

Claims on appeal

Med-Staff's pro se briefs were written by its CFO who is not an attorney. The employer disputes two of the agency's findings. Med-Staff claims Wright's back condition was not work-related or aggravated by work. It also claims Wright accepted but failed to show for the nine hours of training and orientation with the new client. Med-Staff argues this failure makes Wright ineligible for benefits under Iowa Administrative Code rule 871-24.26(6)(b) because she either quit

voluntarily under Med-Staff's no-show rule or she did not remain available for or accept comparable work.

The agency responds (1) if Wright's back either was injured at work or a pre-existing condition was aggravated by performing duties at work, the injury is work-related; (2) Med-Staff's offer of three hours of work on alternating Sundays is not comparable to Wright's earlier work for Med-Staff and was not a reasonable accommodation; and (3) Med-Staff cites to documents which are not in the record of the contested case proceedings, but were submitted with the appeal to the Board.

Discussion

On appeal from judicial review of agency action, our review is for correction of errors of law. *PanDa Eng'g v. Engineering and Land Surveying Examining Bd.*, 621 N.W.2d 196, 198 (Iowa 2001). Our review of agency action is governed by the Administrative Procedure Act as amended. Iowa Code § 17A.19. Applying the standards found in section 17A.19(10) (1999) to the Board's decision, we determine whether our conclusions are the same as those made by the district court. *Voss v. Iowa Dep't of Transp., Motor Vehicle Div.*, 621 N.W.2d 208, 210 (Iowa 2001). We may reverse, modify, or grant any other appropriate relief from the agency action if substantial rights of the petitioner have been prejudiced because of such action. Iowa Code § 17A.19(10). The agency's findings of fact, if supported by substantial evidence, are binding on judicial review. Iowa Code § 17A.19(10)(f). Substantial evidence

means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from

the establishment of that fact are understood to be serious and of great importance.

Iowa Code § 17A.19(10)(f)(1). We view the record as a whole, including relevant evidence which supports or detracts from the finding. Iowa Code § 17A.19(10)(f)(3).

Employment-related injury. The employer's arguments, although couched in the "substantial evidence" language, are that Wright's testimony was not credible and she provided no documentary evidence of her injury. It is within the province of the agency to evaluate witness credibility; therefore, we defer to the credibility determinations made by the agency. See *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845, 853 (Iowa 1995); *E.N.T. Assocs. v. Collentine*, 525 N.W.2d 827, 830 (Iowa 1994). Med-Staff suggests the evidence supports different conclusions than those reached by the administrative law judge. It is not enough to show the evidence supports a different conclusion. In our review, the question is not whether the evidence supports a different finding than the agency's but whether the evidence supports the finding the agency actually made. *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). We will uphold the agency's determination under a sufficiency-of-the-evidence test if it is supported by substantial evidence. Accordingly, we must consider both the evidence supporting the agency finding and the relevant evidence in the record that detracts from the agency finding. The record contains the claimant's testimony she hurt her back when lifting a resident at work. It also contains her worker's compensation report of injury which, although vague, mentions lifting a

resident at work. Substantial evidence supports the agency's determination the injury was work related.

Reasonable accommodation and availability for comparable work. The Iowa Administrative Code language at issue is:

an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Iowa Admin. Code r. 871-24.26(6)(b). Med-Staff argues it arranged for nine hours of orientation to be followed by the three-hour shifts but Wright failed to show up for the training. Med-Staff also claims this work was all it had available within Wright's medical restrictions, because she no longer could perform the job functions of her previous positions. Given the nature of Med-Staff's business as a temporary staffing agency, it does not control the nature or requirements of the positions clients need to have staffed. However, neither the statute nor the administrative code make any exceptions based on the nature of the employer's business. It is clear Med-Staff made some effort to find work for Wright within her medical restrictions. Even assuming, but not deciding Med-Staff is correct that Wright accepted but did not show for the nine hours of orientation in the new position, the administrative law judge could determine the new position was not "other comparable work" as set forth above. Having made that determination, we conclude the agency was correct in awarding benefits to Wright.

Having considered all the claims and arguments made by the parties, we conclude those not expressly addressed in this opinion are either covered by our resolution of the issues discussed or are without merit. We affirm the district court's decision rendered in its appellate capacity on judicial review of the Employment Appeal Board's decision awarding benefits to Paula Wright.

As a final issue, we note Med-Staff was represented in this appeal by its chief financial officer, who is not an attorney licensed to practice in Iowa. Although companies generally may be represented by an officer in administrative agency proceedings, such representation in the district or appellate courts could constitute the unauthorized practice of law. We caution Med-Staff to obtain proper legal representation in any future court proceedings.¹

AFFIRMED.

¹ Iowa Code section 631.14 provides an exception to the requirement for representation by an attorney in small claims actions.