

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 25 1984

CLERK SUPREME COURT

BRIAN COZAD,)

Petitioner-Appellee,)

Filed September 25, 1984

vs.)

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IOWA DEPARTMENT OF JOB SERVICE,)

4-318
83-1151

Respondent-Appellant,)

and CLAYTON CORPORATION,)

Respondent.)

Appeal from the Iowa District Court for Polk County - Luther T. Ganton,
Jr., Judge.

Respondent-agency appeals from the district court decision on judicial
review reversing its disqualification of petitioner from receipt of unemployment
benefits. AFFIRMED.

Blair H. Dewey, Walter F. Maley, and Edmund Schlak, Jr., Des Moines, Iowa,
for respondent-appellant.

Helen L. Stirling, Des Moines, Iowa, for petitioner-appellee.

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

Respondent-agency appeals from the district court decision on judicial review reversing its disqualification of petitioner from receipt of unemployment benefits.

Petitioner was employed on a commission basis as a route salesman servicing snack vending machines for Des Moines Snax Sales for eleven months. Effective May 1, 1982, Des Moines Snax Sales sold two vehicles and merchandise inventory to the Clayton Corporation which continued petitioner's employment without a break.

The new employer paid petitioner \$170 per week. Petitioner testified, however, that the employer promised that after two weeks his route would be split and he would be paid on a straight commission basis. The employer testified that he had agreed to pay petitioner on a commission basis and split his route eventually, but denied that any specific date had been agreed upon. The employer admitted that two weeks might have been mentioned as an approximation.

At the end of two weeks petitioner talked to his employer on at least two occasions about his need for more money. The employer stated that he was not able to make the contemplated changes at that time but increased petitioner's salary by \$10 per week.

Petitioner also testified that he was required to perform additional duties by the new employer which increased the length of his work day from eight hours to thirteen hours. Furthermore, relocation of the business increased his travel time and expenses.

Petitioner quit his job on May 24, 1982, because he was working longer hours and not making enough money. He was denied unemployment benefits by the agency on the grounds that he had voluntarily quit his employment without good cause attributable to the employer. This decision was reversed by the district court which concluded that the extra duties and hours of work without comparable

additional pay was a substantial modification of petitioner's working conditions and constituted a material change in the contract of hire.

Our review under Iowa Code section 17A.20 is limited to a determination of whether the district court made errors of law when it reviewed the 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 have been reached is irrelevant. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269, 270 (Iowa 1982). However, neither we nor the district court is bound by the agency's legal conclusions. Green v. Iowa Department of Job Service, 299 N.W.2d 651, 655 (Iowa 1980).

Iowa Code section 96.5(1) provides that an individual shall be disqualified for benefits if he or she left work voluntarily without good cause attributable to his or her employer. In interpreting the statute the following administrative regulations found in 370 Iowa Administrative Code sections 4.26(1) and (4) attempt to define situations in which there is good cause attributable to the employer:

4.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

4.26(4) The claimant left due to intolerable or detrimental working conditions.

The trial court held that being required to work an additional five hours per day⁵¹ constituted a substantial change in petitioner's contract of hire. We are inclined to agree. Respondent argues, however, that the trial court erred in comparing the working conditions under Des Moines Snax Sales with those under Clayton Corporation. Respondent claims that section 4.26(1) is intended to apply only where there is one employer and one contract of hire. In this case respondent maintains that a new contract was entered into when Clayton hired petitioner which had no relation to his prior contract with Des Moines Snax Sales.

The evidence shows that Clayton purchased vehicles and inventory of Des Moines Snax Sales and continued the employment of petitioner without a break. In spite of the fact that there was technically a change of employers, it was reasonable for petitioner to expect that since he continued to work the same job, essentially the same working conditions would be applicable. We do not imply that employers are bound to contractual terms to which they never agreed. However, where one employer is clearly a successor to another, the employees should be clearly told any differences in working conditions before the successor takes over. In this case it is not clear that petitioner was informed that if he agreed to continue his employment his additional duties would require an extra five hours per day of work. Rather, it appears that petitioner continued what was essentially the same job and later realized there had been a substantial change in his working hours.

Furthermore, even if we consider only petitioner's employment with Clayton, we would reach the same result. Both petitioner and the employer agree that as part of the contract of hire it was contemplated that petitioner's route would be split and that he would be paid on a commission basis. Although the employer denies that any specific date was set for these changes, he admits that two weeks from the date of hire might have been mentioned as an approximate time. We note that this is not a case where an employee quit "because of

dissatisfaction with the wages but knew the rate of pay when hired." ⁵² See 370 Iowa Administrative Code § 4 25(13) Petitioner accepted his weekly salary for a short time with the promise that changes would be forthcoming. When those changes were not made in a reasonable period of time, his contract of hire was breached.

Although there is language in the district court's decree of insubstantial evidence, it is clear that the district court disagreed with the agency's legal conclusions, not with its findings of fact. We agree with the conclusions of the district court.

AFFIRMED