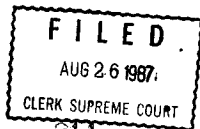


IN THE COURT OF APPEALS OF IOWA



TERRI E. MILLER,	)	
Petitioner-Appellant,	)	Filed August 26, 1987
vs.	)	
IOWA DEPARTMENT OF JOB SERVICE,	)	<u>7-143</u>
Respondent-Appellee.	)	<u>86-1316</u>

Appeal from the Iowa District Court for Poweshiek County (No. CL60-62-343), Dan F. Morrison, Judge.

Petitioner appeals the district court's affirmance of the agency's denial of benefits, contending the agency erroneously placed on her the burden to prove that she left her job for good cause attributable to her employer and that there is no substantial record evidence to support the agency's determination that she quit her job voluntarily and without good cause attributable to the employer. **REVERSED AND REMANDED.**

Lance A. Grotewold of Heslinga, Heslinga & Dixon, Indianola, for petitioner-appellant.

Blair H. Dewey and William C. Whitten, Des Moines, for respondent-appellee.

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

SNELL, P.J.

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The appellant, Terri E. Miller, terminated her employment as a cost accountant with Stadiums Unlimited, Inc. on January 18, 1985. Miller's claim for unemployment benefits was denied after a claims deputy found she had voluntarily terminated her employment without good cause attributable to her employer. A hearing officer affirmed that decision on administrative appeal as did the Appeal Board of the Iowa Department of Job Service. Miller's request for rehearing was denied and, on November 8, 1985, she filed her petition for judicial review.

The case was submitted to the district court on brief and without oral argument. The district court, in its August 6, 1986, ruling, found that substantial evidence supported the administrative agency's decision and that Stadiums Unlimited had carried its burden of proving that Miller voluntarily quit without good cause attributable to her employer. This appeal followed.

In cases arising out of the Iowa Administrative Procedure Act, our scope of review is limited to the correction of errors at law. Iowa Code § 17A.20 (1985); Mary v. Iowa Dep't of Transp., Motor Vehicle Div., 382 N.W.2d 128, 131 (Iowa 1986). We must determine whether the district court made errors of law when it exercised its power of review of the agency decision under Iowa Code section 17A.19 (1985); Polk County Drainage Dist. Four v. Iowa Natural Resources Council, 377 N.W.2d 236, 238 (Iowa 1985). In order to make that determination, this court applies the standards of Iowa Code section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as the district court. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979).

The hearing officer's decision which denied Miller's claim for benefits included the following findings and conclusions:

... claimant has failed to substantiate specific incidents that would justify leaving her employment... Claimant has not introduced evidence to show that whatever the employer's relationship was with General Services Administration, it would have an adverse effect on her personally. Good cause attributable to her employer for leaving her job has not been established.

The hearing officer's decision concluded that "claimant... has failed to establish that her separation was for good cause attributable to the employer." Consequently, the hearing officer found Miller to be disqualified from receiving benefits pursuant to Iowa Code section 96.5(1) (1985). That subsection disqualifies individuals who have "left work voluntarily without good cause attributable to the individual's employer,..."

In Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985), the Iowa Supreme Court addressed the issue of whether the unemployment benefit claimant or the employer has the burden of proof to show that the claimant's quit was voluntary without good cause attributable to the employer. The court determined that, in line with the plain wording of a then-recent amendment to Chapter 96 of the Code of Iowa, the burden was placed by the legislature upon the employer. Id. at 541. That amendment, now part of Iowa Code section 96.6(2) (1985), reads in pertinent part as follows:

The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5. However, the claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "i", and subsection 10.

(emphasis added). Accord, 370 Iowa Administrative Code section 4.25. Clearly both the statute and Taylor place the burden of proof on this issue upon the employer.

The agency's ruling in the present case clearly establishes that the hearing officer misplaced this burden. The district court, however, found that the

"[e]mployer carried its burden and proved that petitioner quit without good cause attributable to employer." This finding was not made by administrative agency. Quite to the contrary, given his misplacement of the burden of proof the hearing officer had no reason to make such a finding. In so finding, we think the district court exceeded its authority as delineated by our statutes and case law. The district court's review of final agency action involving unemployment benefits is at law and is not de novo. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587, 589 (Iowa App. 1984). The district court is therefore limited to the record made before the agency and has no authority to make findings of fact and determine the parties' rights. Taylor v. Iowa Dept. of Job Service, 362 N.W.2d 534, 537 (Iowa 1985). Because the agency's ruling does not disclose a sound factual and legal basis for its decision, the proper course for the district court was not to make additional fact findings but, rather, to remand the case for further such findings in light of the proper application of the law. Taylor, 362 N.W.2d at 537. This we now order. See also Des Moines Ind. Community School Dist. v. Department of Job Service, 376 N.W.2d 605, 610 (Iowa 1985).

Consistent with our disposition of this case, we do not reach Miller's contention regarding the substantial nature of the evidence.

REVERSED AND REMANDED.

Hayden, J., concurs; Sackett, J., dissents.

SACKETT, J (dissenting)

I dissent

I find substantial evidence to support the agency I would affirm the trial court