FILED
MAR 16 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DEPARTMENT OF CORRECTIONS, MEDIUM SECURITY UNIT AT MT. PLEASANT,	)	
Petitioner-Appellee,	)	**48**
vs.	)	
DEPARTMENT OF INSPECTIONS AND APPEALS, EMPLOYMENT APPEAL BOARD and DONNA M. STEELE,	)	8-522
Respondents-Appellants.	)	88-420

Appeal from the Iowa District Court for Henry County (CL 1145-0287), Harlan W. Bainter, Judge.

Respondents appeal the ruling of the district court on a petition for judicial review. **REVERSED.**

Steven J. Crowley, of Ruther, Bauer, Schulte, Hahn, Swanson & Crowley, Burlington, for respondent-appellant Donna M. Steele.

Blair H. Dewey and William C. Whitten for respondent-appellant Employment Appeal Board.

Thomas J. Miller, Attorney General, Layne M. Lindeback, Assistant Attorney General, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J.

Respondents-appellants The Employment Appeal Board (Board) and Donna M. Steele appeal the district court's ruling which reversed the Board's decision granting Donna unemployment benefits.

Donna was employed as a correctional officer for the Department of Corrections at the Mt. Pleasant facility. She was fired after her employer concluded Donna was engaging in a personal relationship with an inmate, Clyde Hollins. The department has a work rule forbidding such relationships. When Donna's claim for unemployment benefits was granted the department sought a hearing. The hearing officer, after listening to the witnesses, concluded Donna had been involved with Hollins in violation of the work rule, was fired for this misconduct and was not entitled to benefits. The Board reversed, finding the department had not carried its burden of proving the alleged misconduct with the inmate had occurred.

The Board found the department's main witness, Mary Jo Lestage, totally discredited. Lestage had earlier been fired by the department because of her relationship with an inmate whom she later married. Lestage testified while she was giving coded letters, gifts and money to an inmate, Donna was sending the same type of correspondence through her to Hollins using the code name "O." Lestage admitted denying relationship at first and that she had given a

picture of Donna to Hollins without Donna's knowledge. Lestage also admitted she had turned Donna in to the prison authorities to get her fired because she felt Donna might be some threat to her husband's ability to get an early parole.

No evidence was presented comparing Donna's handwriting with the letters. Although Donna subpoenaed Hollins, he was not brought to the hearing and no affidavit purporting to be Hollins' version of the incident was presented. Results of polygraph examinations voluntarily taken by Lestage, Hollins, and Donna were entered. The examinations were conducted by an uncertified operator. The examiner testified Lestage's and Hollins' tests showed nondeceptive results while Donna's results were deceptive.

On judicial review the trial court reversed the Board's decision having concluded, "the decision of the Board is unsupported by substantial evidence in the record for the reason the decision of the hearing officer was not given the weight it was entitled to. Without the benefit of the hearing officer's judgment on the issue of credibility the Board's decision is unsubstantiated."

Our review of the district court's decision is limited to correction of errors at law. Roberts v. Iowa Dep't of Job Service, 356 N.W.2d 218, 221 (Iowa 1984). We, like the district court, are bound by the agency's fact findings if those findings are supported by substantial evidence.

Evidence is substantial if a reasonable person would find it adequate for reaching a decision. Peoples Memorial Hospital v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982).

The hearing officer's brief fact findings do not make direct reference to the credibility of witnesses. We can conclude he must have discredited Donna's testimony denying the relationship when he concluded such a relationship did exist. We recognize the principle that deference is due a hearing officer's decision concerning the credibility of witnesses when it is that officer's findings being reviewed by the district court. See Peoples, 322 N.W.2d at 92. However, in this case the district court's scope of review was to look at the final agency decision, i.e., the Board's decision and determine whether it was supported by substantial evidence. Porth v. Iowa Dep't of Job Serv., 372 N.W.2d 269, 272 (Iowa 1985).

Iowa Code section 17A.15(3) (1987) states in part:

> On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties or by rule. (Emphasis supplied.)

This language indicates the Board was free to weigh the evidence in the record, make its own findings of fact, and conclude the employer had failed to sustain its burden of proving the alleged misconduct occurred. A review of the record shows this decision of the Board is supported by

substantial evidence. The district court decision must be reversed and the Board's decision reinstated.

REVERSED.