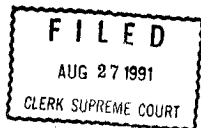


IN THE COURT OF APPEALS OF IOWA

No. 0-681 / 90-929



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JON R. FLAIG,

Appellee,

vs.

EMPLOYMENT APPEAL BOARD,

Appellant.

Appeal from the Iowa District Court for Black Hawk
County, Peter Van Metre, Judge.

Employment Appeal Board appeals the district court
judgment reversing its decision to deny petitioner
unemployment benefits. **AFFIRMED.**

William C. Whitten, Employment Appeal Board, for
appellant.

John W. Ackerman of the Ackerman Law Office, Waterloo,
for appellee.

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

SCHLEGEL, J.

Respondent Employment Appeal Board appeals the judgment of the district court reversing the Board's decision to deny petitioner unemployment benefits. The Board contends Flaig did not meet the eligibility requirements because he failed to file claim forms for a three-month period. We find the agency failed to send Flaig forms for the reports as provided for in its rules and, therefore, affirm.

Petitioner Jon Flaig, a member of the Pattern Makers League, was prevented from reporting to work at the Deere & Company plant in Waterloo because of a strike by the United Auto Workers. Flaig was unable to work for several months during the fall of 1986 due to the strike. In the case of Ames v. Employment Appeal Board, 439 N.W.2d 669 (Iowa 1989), the supreme court determined members of the Pattern Makers League were entitled to unemployment benefits for the period they were prevented from reporting to work.

Flaig initially filed a claim for unemployment compensation in August 1986; this claim was denied by the Iowa Department of Job Service. He was notified by the department that in order to protect his benefit rights he was required to file biweekly claim forms. The department provided these forms to Flaig, and he filed them for as long as he received them. Flaig did not receive claim forms from the department from September 21 through November 22, 1986. He did not contact the department and did not file any claim forms during this period of time.

Flaig did, however, contact his union which told him he needed to file the forms as long as he received them.

After the supreme court decision in Ames, Flaig filed a claim for retroactive benefits. His claim was denied by a job service representative for the period of time he did not file claim forms. After a hearing, an administrative law judge affirmed the representative because he found Flaig had a duty to contact job service when he failed to receive any forms. The Employment Appeal Board affirmed.

Flaig filed a petition for judicial review. The district court found there was not substantial evidence in the record to support the Board's finding that Flaig had no valid reason for failing to comply with the department's rules. The court concluded it was the department's failure to provide the forms which caused Flaig to cease sending the forms. The court reversed the Board's decision. The Board now appeals.

Our review of an agency finding is at law and not de novo. Harlan v. Iowa Dep't of Job Serv., 350 N.W.2d 192, 193 (Iowa 1984); Messina v. Iowa Dep't of Job Serv., 341 N.W.2d 52, 59 (Iowa 1983). The decisions of the agency are final, therefore, if supported by substantial evidence and correct conclusions of law. Heatherly v. Iowa Dep't of Job Serv., 397 N.W.2d 670 (Iowa 1986). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. Aluminum Co. of America v. Employment Appeal Bd., 449 N.W.2d 391, 394 (Iowa 1989); Hollensbe v. Iowa Dep't of Job Serv., 418 N.W.2d 77, 78 (Iowa 1987).

The Board contends the court erred in finding there was not substantial evidence in the record to support the Board's decision. The Board states the evidence clearly shows Flaig made no effort to comply with the filing requirements.

We find Flaig did attempt to satisfy the filing requirements. He quit receiving claim forms from the job service office at the time he received notification that he was disqualified from receipt of benefits. The failure to receive forms led Flaig to believe he was no longer required to file these forms. Job service failed to send petitioner claim forms which is the procedure it normally follows and which is provided for in its rules. Iowa Admin. Code r. 345-10.1 (1988); Employment Appeal Board Decision, No. 89B-UI-05037, July 26, 1989 (James Althaus, dissenting). A reasonable person would expect that when claim forms are at first provided and then no longer provided, the forms no longer need be filed. Cf. Comiskey v. Iowa Dep't of Employment Servs., 425 N.W.2d 663 (Iowa App. 1988) (Petitioner who failed to file claim forms for twenty-five weeks denied unemployment benefits; no mention as to whether department had provided forms at first and then stopped). We find there is not substantial evidence in the record to support the Board's decision.

The Board also contends the court erred in not addressing the burden of proof issue. It points out that under Iowa Code section 96.6(2) the claimant has the burden

of proof to establish eligibility for unemployment benefits. The Board believes Flaig did not meet his burden in this case.

Flaig has shown he did all a reasonable person would feel necessary to meet the basic eligibility conditions of the Iowa Department of Job Service and has established that the forms were not provided. The only reason Flaig failed to file the required forms was that the Board itself discontinued providing him forms in violation of the law. If substantial rights of the employee are prejudiced because the agency's action is in violation of an agency rule, the court shall reverse, modify, or grant any other appropriate relief from the agency action. Iowa Code §17A.19(8)(c) (1991); see Brumley v. Iowa Dep't of Employment Servs., 292 N.W.2d 126, 129 (Iowa 1980). The district court action giving Flaig benefits is affirmed.

AFFIRMED.