FILED
DEC 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

THOMAS G. TAYLOR,

Plaintiff-Appellant,

vs.

SAGA ENTERPRISES INC., d/b/a STUART ANDERSON CATTLE CO., a California corporation licensed to do business in Iowa,

Defendant-Appellee.

Filed December 23, 1980

0-290
2-64148

Appeal from Polk District Court - James P. Denato, Judge.

Plaintiff appeals from grant of summary judgment for defendant in plaintiff's slander action, contending that certain allegedly slanderous statements made by defendant were not privileged. AFFIRMED.

Thomas G. Taylor, Des Moines, pro se.

Jeff H. Jeffries of Hopkins & Huebner, Des Moines, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiff, Thomas G. Taylor, appeals from a grant of summary judgment for defendant Saga Enterprises in plaintiff's slander action. Plaintiff asserts 1) that an allegedly slanderous statement made by defendant to an agency employee in connection with plaintiff's claim for unemployment benefits was ex parte and therefore not privileged and 2) that no privilege attaches to an allegedly slanderous statement made by defendant at an agency hearing following plaintiff's appeal from denial of unemployment benefits. We agree that the defendant is entitled to summary judgment.

I.

Plaintiff filed a claim for unemployment benefits with the Iowa Department of Job Service after he was fired from his job as a waiter in defendant's restaurant. Defendant did not file a protest to the claim and allegedly did not appear at the initial fact-finding interview on December 26, 1978, although a checked box on the agency's form indicates that the defendant was present at the interview. On January 3, 1979, the defendant met with Roy Stout, the Job Service employee who had conducted the December 26th interview, and filed with Stout a written "employer's statement of fact." In this statement, defendant indicated that the plaintiff was fired for failure to follow instructions (or, more specifically, for ignoring defendant's instructions to keep busy) and for demonstrating "an uncooperative and negative attitude." The statement also included allegations that the plaintiff had an unexcused absence from work, that he had not been following proper time card procedures, and that on three different occasions he had violated defendant's policy against on-duty purchase or consumption of alcoholic beverages. Plaintiff learned nothing about the status of his claim until January 24, at which time he contacted the agency and was informed that he had been disqualified for eligibility through January 27, but would be eligible for benefits after that date. He appealed this finding and only then did he learn that defendant had given insubordination as the reason for plaintiff's dismissal.

Plaintiff's appeal was heard by the agency on February 19, 1979. Both plaintiff and defendant appeared at the appeal hearing, at which defendant again stated that he had fired plaintiff for refusing to follow defendant's instructions to keep busy. Defendant also referred to several incidents involving plaintiff's use of alcoholic beverages while at work, including one occasion, witnessed and reported by the restaurant's bartender,

when the plaintiff served himself wine from the restaurant's bar without permission of the defendant and while he was on duty. The agency then affirmed the initial denial of unemployment benefits, apparently relying in part on the defendant's January 3 and February 19 statements that the plaintiff had consumed alcoholic beverages at work. Alleging that these statements constituted slander, plaintiff then filed a pro se petition in the district court. The defendant moved for summary judgment on the ground that the statements in question were made in the context of a quasi-judicial proceeding and were therefore privileged. The trial court granted defendant's motion and dismissed the petition. Plaintiff's petition for judicial review of the agency action was also dismissed, with this court affirming the dismissal in Taylor v. Iowa Department of Job Service, No. 98/2-64008 (Iowa Ct. App., filed May 30, 1980).

II.

Plaintiff first alleges that the allegedly slanderous statement made by the defendant to the Job Service representative on January 3 was not a privileged communication and that therefore the defendant has no defense to plaintiff's slander claim. Essentially, plaintiff raises two points: 1) that the January 3 statement was ex parte because the plaintiff was not present when it was made and 2) that the statement was not made during the course of a judicial or quasi-judicial proceeding and therefore is not privileged. We reject plaintiff's arguments.

First, it would appear that the agency is not restricted to considering only that information gathered during the course of the eligibility hearing where both parties are present. Instead, a Job Service representative may determine the claimant's eligibility on the basis of such information as he or she may obtain. 370 I.A.C. § 4.19(1). See also id. § 4.7(1)(g). In addition, the agency may obtain information from records or reports made by the claimant's employer. This was in fact what happened in the instant case; the Job Service form on which the defendant made the allegedly slanderous statement bore the notation that the employer "understand[s] that any statement made herein may be used as evidence in the determination of eligibility for Job Insurance Payments and will be made a part of the claim record file." We therefore conclude that the information conveyed by the defendant to the agency representative on January 3, including the allegedly slanderous statement, cannot properly be seen as an impermissible communication by one party in the absence of the other.

Moreover, we think that receipt of the defendant's information by the agency was

an exercise of the agency's quasi-judicial function. Broadly speaking, an administrative agency may be said to perform a quasi-judicial function when it examines the facts, determines the law arising from those facts, and ascertains and applies the appropriate remedy. See Cedar Rapids Human Rights Commission v. Cedar Rapids Community School District, 222 N.W.2d 391, 395-97 (Iowa 1974). In the instant case, although the agency had not yet progressed beyond an examination of the facts relevant to plaintiff's eligibility for unemployment benefits, it may properly be said that the agency was engaged in a quasi-judicial function at the time defendant made the allegedly slanderous remark to the Job Service representative. Furthermore, although there is apparently no law on the question in Iowa, the general rule is that the privilege afforded statements made during the course of judicial proceedings is extended to cover statements made during the course of quasi-judicial proceedings before administrative agencies. See generally 50 Am. Jur. 2d Libel and Slander § 234 (1970); 53 C.J.S. Libel and Slander § 104 (1948). For these reasons, we affirm the trial court's ruling with respect to the allegedly slanderous statement made on January 3.

III.

Plaintiff also contends that the allegedly slanderous statement made by defendant at the February 19 hearing was not privileged. This contention is based on two arguments: 1) that the statement was not privileged because it was not relevant to the question of plaintiff's eligibility and 2) that the agency was acting outside its jurisdiction when it held the hearing. We find neither argument convincing.

In order for the privileged communication rule to be applicable, the particular statement in question must be reasonably relevant or pertinent to the issues in the case. Prosser on Torts § 114, at 778-79 (4th ed. 1971); see Asay v. Hallmark Cards, Inc., 594 F.2d 692, 697 (8th Cir. 1979); Robinson v. Home Fire & Marine Insurance Co., 242 Iowa 1120, 1126, 49 N.W.2d 521, 525 (1951). Relevancy in this context does not mean that the statement must satisfy the requirements of the rules of evidence; it means instead that the statement need only be possibly pertinent to the issues, with all doubts resolved in favor of the party claiming the privilege. Prosser on Torts § 114, at 779 (4th ed. 1971). We think this standard was met in the instant case. Under Iowa law, the plaintiff would forfeit one to nine weeks of unemployment benefits if the agency determined that he was fired for misconduct in connection with his employment. § 96.5(2)(a), The Code 1979. The defendant employer's statement concerning plaintiff's use of alcoholic

beverages at work is clearly relevant to the question of whether plaintiff was fired for misconduct in connection with his employment; plaintiff cannot claim lack of relevance as grounds for not applying the privilege in this instance.

Plaintiff also alleges that the agency was deprived of jurisdiction to act on February 19 by the fact that the defendant did not file an employer's protest to his claim within the time allowed by statute. We do not agree that the agency lacked authority to act on plaintiff's claim. Statute provides that an employer has seven days from the mailing of notice of the claim to protest payment to the claimant. § 96.6(2), The Code 1979. Agency regulations provide, however, that if the employer has filed a timely report of facts that may adversely affect the claimant's eligibility for benefits, the report constitutes a protest to payment of the claim. 370 I.A.C. § 4.8(1)(b). Plaintiff filed his claim on December 11, 1978, and notice of filing was allegedly mailed to the defendant shortly thereafter, although defendant does not acknowledge receipt of the notice form. Plaintiff made a written statement to an agency representative on December 26; an "employer's statement of fact" was made by the defendant approximately one week later. We conclude that the defendant's report was timely and that failure to protest the claim within seven days of mailing notice of the filing did not deprive the agency of authority to act on plaintiff's claim. This is particularly true because it is not clear that the defendant ever received the form notifying the agency that the claim had been filed. We therefore affirm the trial court's holding that both the January 3 and February 19 statements were privileged because they were made in connection with an exercise of the agency's quasi-judicial function.

AFFIRMED.