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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JUANITA E. VOLLMER,)

Petitioner-Appellee,)

vs.)

IOWA DEPARTMENT OF JOB SERVICE,)

Respondent-Appellant.)

Filed March 24, 1981

0-373
2-64952

Appeal from Woodbury District Court - D. M. Pendleton, Judge.

Iowa Department of Job Service appeals the district court's decision which held that petitioner was not disqualified from receiving unemployment compensation benefits for making a false statement regarding another person's eligibility for benefits. AFFIRMED.

Joseph L. Bervid, of Job Service of Iowa, Des Moines, for respondent-appellant.

Leroy J. Sturgeon, of Smith & Smith, Sioux City, for petitioner-appellee.

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

SNELL, J.

Iowa Department of Job Service appeals the district court's decision which held that petitioner, Juanita F. Vollmer, was not disqualified from receiving unemployment compensation benefits. On August 25, 1978, a claims deputy working for Job Service disqualified Vollmer from receiving unemployment benefits for a period of six weeks, because Vollmer knowingly made a false representation to assist another claimant to obtain unemployment benefits. After a full hearing the decision of the claims deputy was reversed by the hearing officer for Job Service. On appeal to the Appeal Board, the decision of the hearing officer was reversed. The district court then reviewed this decision, and reversed it. We affirm.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4. We uphold agency fact findings that are supported by substantial evidence in the record made before the agency when that record is viewed as a whole. Farmer's Elevator Company, Kingsley v. Manning, 286 N.W.2d 174, 176 (Iowa 1979). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. Hawk v. Jim Hawk Chevrolet-Buick, Inc., 282 N.W.2d 84, 87 (1979).

Substantial evidence supports the following facts found by the agency. On August 9, 1978, Juanita Vollmer entered the Leather Spur Shop in Sioux City, Iowa, and asked the owners if they were hiring any new employees. When the owners said they were not, Vollmer asked if she could leave her name with them as a record that she had sought employment there, so as to enable her to collect unemployment benefits. The owners gave her a sheet of paper for that purpose, and on it she signed the name of Sherry Nash, as well as her own. Sherry Nash was not with Vollmer at the time, nor did she ever approach the owners of the Leather Spur concerning employment. Nash later falsely indicated to Job Service that she had searched for work at the Leather Spur.

The only issue before us is whether section 96.5(8), The Code 1977, as applied to the facts of this case, requires Vollmer's disqualification from receiving unemployment compensation benefits. We conclude that it does not.

Section 96.5(8) in part provides:

> An individual shall be disqualified for benefits:
>
> * * *
>
> 8. Administrative Penalty
> If the department finds that with respect to any week of an insured worker's unemployment for which such person claims credit or benefits, such person has, within

> the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case.

This section would have provided the basis for Vollmer's disqualification, if she had falsely stated that she had applied for work at the Leather Spur. But does it also disqualify her for falsely stating that Sherry Nash had applied there? We are persuaded it does not.

Vollmer had honestly fulfilled the requirements for her own eligibility for benefits by actually applying for work. No fraud was perpetrated upon Job Service which resulted in the payment of benefits to Vollmer that were not due. Moreover, there is no language in section 96.5(8) that disqualifies an individual who makes a false statement to benefit another person.

We find it significant that the legislature included the making of a false statement to obtain a benefit "for any other person" in section 96.16, but did not include this language in section 96.5(8). Had the legislature wanted it included, it could have done so. See Alaska v. American Can Co., 358 U. S. 224, 227, 79 S. Ct. 274, 276, 3 L.Ed. 257, 259 (1959) (United States Supreme Court will not read into statute what Congress omitted); State v. Brustkern, 170 N.W.2d 389, 392 (Iowa 1969) (Iowa Supreme Court will not speculate as to probable legislative intent apart from wording used in statute.)

Job Service is not without a remedy. The acts of Vollmer are specifically covered by section 96.16, which defines a fraudulent practice as follows:

> I. Penalties.
>
> "Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this chapter, either for himself or herself or for any other person, shall be guilty of a fraudulent practice."

Subsection 3 of section 96.16 makes this offense a simple misdemeanor. The acts of both Vollmer and Nash are embraced by the language of section 96.16.

Job Service is also not without a civil remedy for any fraud commited by Nash in obtaining benefits. Section 96.16(4) provides the means to recover benefits paid as a

result of misrepresentation.

The district court's decision is affirmed.

Cost are assessed to appellant.

AFFIRMED.

All judges concur except Donielson, J., who dissents.

DONIELSON, J. (dissenting)

I dissent from the majority's conclusion that section 96.5(8), The Code 1977, does not require Vollmer's disqualification from receiving unemployment compensation benefits. The statute provides for disqualification upon a finding that the individual has acted in such a way as to "obtain any benefits not due"; application of this provision is not limited to the situation where the benefits wrongfully obtained were not due the applicant. To construe section 96.5(8) so as to preclude its application where the applicant has wrongfully attempted to obtain benefits for another is to effectively eliminate the administrative penalty in the particular circumstances of this case. Since section 96.5(8) is designed to provide a penalty for the misuse of agency funds, the focus is on misuse of those funds and not on the individual whose wrongful receipt of benefits constitutes such misuse. I therefore would disqualify Vollmer from benefits for having made a false representation to help Nash obtain unemployment benefits.

Moreover, I view as irrelevant the fact that section 96.16(3) provides for the criminal prosecution of one who wrongfully obtains benefits for another; the appropriate question is whether an administrative remedy is available in the case at bar. Since the evidence clearly shows misuse of agency funds, I would hold that such a remedy is available in this case pursuant to section 96.5(8).