

BARBARA L. MANSIEM,
PATRICK VAN WINKLE,
HELEN L. HOTCHKIN,
TIMOTHY A. SEVERIN,
RICHARD J. CALFEE, JR., and
JILL BAXTER,

Petitioners-Appellants,

vs.

IOWA DEPARTMENT OF JOB SERVICE
and ARMOUR-DIAL, INC., a corporation,

Respondents-Appellees.

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CLERK SUPREME COURT

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2-65710

Appeal from Lee District Court, William S. Cahill, Judge.

Petitioners appeal from the district court decision affirming the agency's denial of their individual claims for unemployment compensation. AFFIRMED.

MacDonald Smith of Smith & Smith, Sioux City, for petitioners-appellants.

Walter F. Maley, Blair H. Dewey, and Joseph L. Bervid, Des Moines, for respondent-appellee agency.

Robert O. Thomas of Deitchler, Thomas, Saunders, Krogmeier, Humphrey & Johnson, Fort Madison, for respondent-appellee employer.

Submitted to Oxberger, C.J., Donielson, Carter, Snell, and Johnson, JJ.

Petitioners appeal from the district court decision affirming the agency's denial of their individual claims for unemployment compensation.

Respondent, the Iowa Department of Job Service, denied each petitioner's individual claim for unemployment benefits. All of the separate cases were consolidated for review by the district court. The court, after hearing the cases, entered an order affirming the agency's denial of unemployment benefits.

The seven cases consolidated for judicial review fall into three factual categories. Claims of petitioners Barbara L. Mansheim, Patrick Van Winkle and Helen Hotchkin are in the first category. Claims of petitioners Timothy A. Severin and Richard J. Calfee, Jr., are in the second category. The claimant in the third category of claims is Jill Baxter.

The employees in the first category of cases claim they were eligible for unemployment benefits because their unemployment resulted from the temporary shutdown of the company plant. The employees in the second category of cases claim they were eligible for unemployment benefits since their failure to sign the temporary work register was not an indication of their unavailability for, or failure to actively seek, work. Jill Baxter, the employee in the third category, claims she is entitled to unemployment benefits because her refusal to accept an offer by respondent for one day of work was proper in that the work offered was not "suitable work" as required by section 96.5(3)(a), The Code 1979.

The first category of cases involved an annual shutdown of the factory of respondent, Armour-Dial Company, for maintenance. In 1979 this mandatory shutdown took place between July 23 and August 6. The employees of Armour-Dial were required to take their vacations at the time of the annual shutdown. They had the right to request their vacations be scheduled at other times during the year. In the event an employee requested to take a vacation at a time other than between July 23 and August 6 of 1979, the employee was required to request a leave of absence without pay during the period of time the factory was shut down. In the first category of cases, each party requested to take his or her vacation at a time other than during the period of the annual shutdown. In each instance, the employee was granted the right to take the vacation at the time requested. Each employee in category one requested a leave of absence for the period between July 23 and August 6. On July 11, 1979, Van Winkle wrote a letter to respondent, Armour-Dial, which stated he was canceling the leave of

absence he had requested during the period of the factory shutdown. Van Winkle further advised respondent he would be available for work during that period of time. Hotchkin mailed a letter to Armour-Dial in which she requested to cancel her leave of absence during the period of the factory shutdown. On July 17, 1979, Barbara L. Mansheim wrote a letter to Armour-Dial canceling her leave of absence for the period during which the factory was shutdown. She likewise indicated she would hold herself available for any work consistent with her seniority. In each of those cases, the employee obtained all of the requested vacation during the period the vacation had been initially scheduled outside of the time the factory was closed.

Employees Severin, Calfee, and Baxter, in categories two and three, were laid off by Armour-Dial. Upon being laid off, each employee had the option of registering or signing a temporary work log. In the event the company had work to offer to the employee, the employee would then be called from the temporary work log. Additionally, each of those three employees had the right to sign another register known as a "bump log." Upon signing the "bump log," an employee is entitled to displace another employee in a different department of the factory who might have less seniority. At the time of his lay-off, Severin did not sign the temporary log. Calfee did not sign the temporary log, nor did he sign the bump log. Baxter did sign the temporary log at the time of her lay-off, and the company did offer her a job of less than eight hours duration. She refused the job.

The trial court affirmed the agency's denial of unemployment benefits to the claimants in category one. We are of the opinion the trial court correctly applied the law and is, therefore, affirmed.

In reaching our conclusion, we rely upon Iowa Malleable Iron Company v. Iowa Employment Security Commission, 195 N.W.2d 714 (Iowa 1972) and 370 I.A.C. § 4.22(1)(5), Iowa Administrative Code ch. 370, § 4.22(1)(5) provides: A leave of absence negotiated with the consent of both parties, employer and employee, shall be deemed a period of voluntary unemployment for the employee-claimant, and he (she) shall be considered ineligible for benefits for such period. The relevant portion of Iowa Malleable Iron Company v. Iowa Employment Security Commission, 195 N.W.2d 714, provides: a person unemployed during any plant shutdown for retooling or employee vacation leave is ineligible for compensation benefits only to the extent an employer pays or is obligated

to pay that person for any vacation leave attributable to the shutdown. . . Id. at 717. In the first category of cases, the facts indicate employees Mansheim, Van Winkle and Hotchkin each negotiated with employer Armour-Dial to take their allotted vacations at times other than during the annual plant shutdown in exchange for their agreement to take a voluntary leave of absence during the shutdown. Armour-Dial, therefore, was not obligated to pay those particular employees during their voluntary leaves of absence, which coincided with the annual plant shutdown. Since a person is entitled to unemployment benefits only to the extent an employer is obligated to pay that person for any vacation leave attributable to the shutdown, id., or when the leave of absence is involuntary and nonnegotiated, 370 I.A.C. § 4.22(1)(5). The agency appropriately denies Mansheim's, Van Winkle's and Hotchkin's requests for benefits as they have satisfied neither requirement.

The second category of cases deals with the question of whether the employees' failure to sign the temporary lay-off register, which would enable them to be recalled on the basis of their seniority for any work becoming available during the factory shutdown, constitutes a failure on their part to earnestly and actively seek work as required by section 96.4(3), The Code 1979. The agency and the trial court held failure to sign the lay-off register disqualified employees Calfee and Severin for unemployment benefits. We affirm those decisions.

II. District court review of agency fact findings is governed by section 17A.19(8), The Code 1979. The trial court will uphold agency fact findings that are supported by substantial evidence in the record, viewed as a whole, made before the agency. Id.; Hawk v. Jim Hawk Chevrolet-Buick Inc., 282 N.W.2d 84, 86-87 (Iowa 1979). Evidence is substantial when a reasonable mind would accept it as sufficient to support a conclusion. Id. at 86. The possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence. City of Davenport v. Public Employees Retirement Board, 264 N.W.2d 307, 311 (Iowa 1978). In Hoffman v. Iowa Department of Transportation, 257 N.W.2d 22 (Iowa 1977), the supreme court stated:

An appeal from the determination of the district court is allowed under § 17A.20. Our review in a contested case under § 17A.20 is not de novo. Our task is to review the

record in the manner specified in § 17A.19(7) and make anew the judicial determinations specified in § 17A.19(8). Our review is limited, as the district court's review should have been, to the record made before the hearing officer.

The sole question, then, for our determination is whether the record before the hearing officer shows [contains substantial evidence supporting the agency determination.]

Thus, the sole question for our determination is whether there was evidence in the record of such nature that it is reasonable to conclude employees Calfee and Severin were not actively and earnestly seeking work as required by section 96.4 (3), The Code 1979. The findings of fact by the hearing officers indicate employees Severin and Calfee were aware of the possibility of obtaining temporary work by signing the lay-off register. Neither employee availed himself of the opportunity. Had Severin signed the temporary work register, he would have been able to work all of the days of the twenty working days of his lay-off. Calfee refused to sign the temporary work register because he considered himself an independent agent available for full-time work but not temporary work. We are compelled to adopt those factual findings as there is substantial evidence of those facts in the record. Iowa Malleable Iron Company v. Iowa Employment Security Commission, 195 N.W.2d 714, 717 (Iowa 1972).

On the basis of the record established before the agency, we have no trouble finding substantial evidence that Calfee and Severin were not earnestly seeking work as required by section 96.4(3), The Code 1979, and deny their request for unemployment benefits. We note, however, our decision does not establish a presumption that failure to sign a company's temporary work roster is tantamount to failing to actively or earnestly seek work. We agree with appellants such result would contravene 370 I.A.C. 4-22(96)(m). Instead, we consider the failure to sign a temporary work register as but one factor in the record to be weighed against all the others in determining whether an employee is actively and earnestly seeking work. We think, on the record presented, Severin's and Calfee's failure to exploit the ostensibly effective method of finding work by signing the temporary work register substantially undermines their contentions they earnestly and actively sought work.

Jill Baxter is the only claimant in the third category of claims. She, unlike Severin and Calfee, signed the temporary lay-off register. When she was called for work, however, she refused to accept the offer, which entailed work of less than eight hours in duration. Section 96.5(3)(a) lists factors to be considered by the department in

determining if the work offered constitutes "suitable work." Essentially, the factors compare the similarity between the work offered and the work previously done. If the offered work is similar enough to the work previously done, the claimant must accept the employment or forego any unemployment benefits.

Baxter does not argue the nature or quality of the work was unsuitable. Her contention is the duration of the work makes the offered work unsuitable. The list contained in section 96.5(3)(a) does not include the daily duration of time as a factor. Nor did the appeals board or the trial court consider duration to be a substantial enough factor in this case to conclude the temporary work was not suitable. Nor do we think the purposes underlying unemployment benefits mandates such a finding. We hold the agency's conclusions are supported by substantial evidence in the record and therefore affirm the trial court.

AFFIRMED.