FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

269

LARRY E. MARSHALL,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF JOB SERVICE,

Respondent-Appellee,

and

DONNA'S CORNER CAFE,

Respondent-Appellee.

Filed August 29, 1985

5-232
84-1328

Appeal from the Iowa District Court for Mahaska County - James D. Jenkins, Judge.

Petitioner appeals the district court's affirmance of the Job Service decision denying his unemployment benefits. **AFFIRMED.**

Kay Delafield and Sarah Wenke, Legal Services Corporation of Iowa, Ottumwa, Iowa, for petitioner-appellant.

Walter F. Maley, Blair H. Dewey, Des Moines, Iowa, and Joseph L. Bervid, Cedar Rapids, Iowa, for respondent-appellee Iowa Department of Job Service.

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

Petitioner, Larry Marshall, appeals a district court judgment affirming defendant Iowa Department of Job Service's decision denying unemployment compensation benefits. We affirm.

Marshall worked at Donna's Corner Cafe. On July 26, 1982, he had a phone conversation with his employer, Donna McCartney. The conversation ended when Marshall hung up after making a statement that could be understood as a statement of intent to quit. He claimed at the administrative hearing, however, that he intended to report for work the next day. He testified that he did not in fact report for work because a co-employee called him and relayed a message from McCartney that he and his wife had been fired. McCartney denied telling the co-employee that Marshall was fired. Further, the co-employee was not a superior with authority to fire Marshall.

The hearing officer ruled that Marshall could not rely on the statement of his fellow employee as a justification for not reporting to work. Benefits were denied. The hearing officer's decision was affirmed by the Job Service appeals board and by the district court on judicial review.

On appeal, Marshall presents two arguments. First, he claims the hearing officer's decision was based on an erroneous interpretation of law. Second, he argues the case should be remanded so that he can present new evidence.

The hearing officer did not aply an incorrect rule of law. Marshall had the burden of proving his eligibility for unemployment benefits. Gipson v. Iowa Department of Job Service, 315 N.W.2d 834, 836 (Iowa Ct. App. 1981). That includes the burden to prove he did not voluntarily quit. See Iowa Code § 96.5(1) (1983) (voluntarily quitting disqualifies claimant from receiving benefits). Based upon the record and circumstances of this case, Marshall failed, as a matter of law, to prove that he did not voluntarily quit.

The Iowa Supreme Court indicated in a related context that quitting requires an intention to terminate the employment relationship accompanied by an overt act carrying out the intent. Local Lodge No. 1426, Etc. v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Marshall's statement to McCartney before hanging up the phone indicates an intent to quit. He argues that he did not in fact have such an intent, but that he failed to show up for work because a fellow employee told him he was fired. That assertion of reliance, by itself, is as a matter of law insufficient to establish an absence of intent to quit, when claimant's proceeding statements have indicated an intent to quit.

Because subjective intent is hard to prove or disprove, we must require proof of some action on claimant's part that would tend to negate a prior statement of intent to quit. This requirement is not unjust, for if the claimant really desires to retain the job, he or she would want to investigate the accuracy of a fellow employee's statement that he or she had been fired. The records show Marshall took no action to ascertain whether he had been fired. He thus failed to prove he did not voluntarily quit.

Marshall's argument that the case should have been remanded to allow presentation of new evidence is without merit. There is no showing that Marshall had good reason for not presenting the evidence at the hearing. See Iowa Code § 17A.19(7) (1983).

AFFIRMED.