IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

BATAVIA GRAIN, INC.,

Petitioner-Appellee,

vs.

IOWA DEPARTMENT OF JOB SERVICE and JOHN W. IRWIN,

Respondents-Appellants.

Filed February 25, 1987

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86-881

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Appeal from the Iowa District Court for Jefferson County (No. CE 1104) - James D. Jenkins, Judge.

Respondent agency appeals from the district court's ruling overturning an agency decision requiring petitioner to contribute toward claimant's unemployment compensation. **REVERSED.**

Joseph L. Bervid, Walter F. Maley and Blair H. Dewey, Des Moines, for the respondents-appellants.

David P. Miller, Libertyville, for the petitioner-appellee.

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

**PER CURIAM**

Respondent Department of Job Service found claimant John Irwin entitled to unemployment compensation and directed Petitioner Batavia Grain, Inc., as one of Irwin's last three employers, to contribute to the unemployment compensation. Batavia Grain challenged this agency action by filing a petition for judicial review. Batavia Grain asserted Irwin had not been a Batavia Grain employee, but rather had performed trucking services as an independent contractor. The district court held that Irwin was an independent contractor and overturned the agency action requiring Batavia Grain to contribute toward Irwin's unemployment compensation.

Job Service has appealed from the district court's ruling. Job Service contends the evidence does not support the district court's conclusion Irwin was an independent contractor rather than a Batavia Grain employee.

Batavia Grain has filed an application for costs and attorney's fees on appeal. This application has been ordered submitted with the appeal.

The sole question before us is whether there is substantial evidence in the record to support the agency's determination claimant was an employee of Batavia Grain. Iowa Code §17A.19(8)(f) (1985); Herring v. Iowa Law Enforcement Academy, 341 N.W.2d 65, 66 (Iowa App. 1983). Section 17A.19(8)(f) (1985) provides in a contested case the court shall grant relief from an agency decision which is not supported by substantial evidence in the record made before the agency when that record is viewed as a whole. Henry v. Iowa Department of Job Service, 393 N.W.2d 731, 734 (Iowa App. 1986). In making this determination we are limited to the record made by the agency. Boyd v. Iowa Department of Job Service, 377 N.W.2d 1, 2 (Iowa App. 1985). We do not make an independent determination concerning the preponderance of the evidence. Henry, 393 N.W.2d at 734.

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Evidence is substantial when a reasonable person would accept it as adequate to reach a conclusion. Herring, 341 N.W.2d at 66. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made by the agency. Boyd, 377 N.W.2d at 2. The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Henry, 393 N.W.2d at 734.

The district court determined there was insufficient evidence to support the agency's determination. We reverse.

It is undisputed claimant was a self-employed farmer who also hauled grain for Batavia Grain on a part-time basis. He drove a truck belonging to Batavia Grain. There is some dispute as to the control Batavia Grain exercised over the claimant. The hearing officer found the claimant received direction and control from the manager of Batavia Grain as to what grain he should load and where and when he should deliver it. There is evidence in the record to support the hearing officer's finding. The hearing officer also found, despite the fact Batavia Grain claimed there was an oral contract with the claimant making him an independent contractor, the claimant was unaware of the contract.

We determine there is substantial evidence to support the hearing officer's finding of an employer-employee relationship. See Meredith Publishing Co. v. Iowa Employment Security Commission, 232 Iowa 666, 6 N.W.2d 6, (1942).

Batavia Grain asks for costs and attorney fees. They cite no authority to support their request. As such, we deem their request waived. Iowa R. App. P. 14(a)(3); Keller v. Peoples Natural Gas Co., 352 N.W.2d 688, 694 (Iowa App. 1984).

The district court is reversed and the determination of the agency is reinstated.

**REVERSED.**