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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ELEANOR E. FINDLEY,)
Petitioner-Appellant)
vs.)
)
IOWA DEPARTMENT OF JOB SERVICES and the SHELBY COMM. SCHOOL DIST.)
Respondents-Appellees)

Filed March 24, 1981

0-315
64840

Appeal from Shelby District Court - Keith E. Burgett, Judge.

Petitioner-teacher appeals district court order affirming respondent-agency's denial of application for unemployment benefits on the ground that the teacher had voluntarily quit when she agreed to the terms by which her contract was terminated. REVERSED AND REMANDED.

Mark R. Adams, of Dreher, Wilson, Adams, Jensen, Sayre & Gribble, of Des Moines, for petitioner-appellant.

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

Steven H. Krohn, of Smith, Peterson, Beckman & Wilson, Council Bluffs, for respondent-appellee, Shelby Comm. School Dist.

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

SNELL, J.

Petitioner-teacher, Eleanor E. Findley, appeals from a district court order affirming respondent-agency's denial of her application for unemployment compensation benefits, asserting that an agreement under which her employment was terminated did not constitute a voluntary quit without good cause attributable to her employer. We reverse and remand.

On January 29, 1979, pursuant to section 279.27, The Code 1979, Eleanor Findley, a teacher employed by the Shelby Community School District as a junior high English teacher since August, 1971, was notified by the school district's superintendent that he would recommend to the school board that her employment be terminated. At the same time she was immediately suspended by the superintendent until such time as the school board made a final determination on the superintendent's recommendation. The superintendent made the recommendation and Findley requested a private hearing pursuant to section 279.15, The Code 1979. Prior to the hearing, Findley's representative entered into negotiations with the superintendent's attorney, which resulted in a written agreement dated March 1, 1979 between Findley and the school district. Under the agreement Findley withdrew her request for the hearing, agreed to the termination of her contract of employment, and agreed to accept a payment of $1,628.14 in full satisfaction of all the salary and expenses owed to her by the school district. The agreement further provided:

> This Agreement is not intended to preclude TEACHER from making any claim for Employment Security Benefits to which she may be entitled under the laws of the State of Iowa, nor to preclude SCHOOL from resisting the payment of any benefits under the Employment Security law of the State of Iowa to TEACHER which are chargeable to the account of SCHOOL in the event SCHOOL deems TEACHER not entitled thereto under the provisions of the laws of the State of Iowa. In other words, this Agreement shall not constitute estoppel or waiver against either party relative to issues arising under the Employment Security laws of the State of Iowa.

No oral or written resignation from her job apart from the above agreement was ever given by Findley to the school district.

Findley thereafter applied to the Iowa Department of Job Service for unemployment compensation benefits, and a claims deputy granted the benefits. The school district appealed the decision to a hearing officer, who after a full hearing, reversed the

deputy's decision. A tie vote by the Job Service appeal board constituted an affirmance of the hearing officer's decision. On appeal to Shelby County District Court the appeal board's decision was affirmed.

The district court's scope of review was governed by section 17A.19, The Code 1979. We review the district court's decision pursuant to section 17A.20, The Code 1979. Our duty is to correct errors of law made by the district court. Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979); Iowa R. App. P. 4.

Section 96.5(1), The Code 1979, provides:

> An individual shall be disqualified for benefits: 1. Voluntary quitting. If he or she has left his or her work voluntarily without good cause attributable to his or her employer, if so found by the department.

Citing this section, the hearing officer denied Findley unemployment compensation benefits on the ground that Findley left her job voluntarily without good cause attributable to her employer.

There are no disputes in this case concerning questions of fact. The sole question before us is whether Findley's termination of employment constituted a voluntary quit or was without good cause attributable to her employer. This issue is primarily one of law which is determinable by the judiciary alone. Iowa Malleable Iron Co. v. Iowa Employment Security Commission, 195 N.W.2d 714, 717 (Iowa 1972); Ellis v. Iowa Department of Job Service, 285 N.W.2d 153, 156 (Iowa 1979). With regard to the construction of statutes, we give some weight to the agency's construction, but we are not bound by it. Ellis v. Iowa Department of Job Service, 285 N.W.2d 153, 156 (Iowa 1979); City of Des Moines v. PERB, 275 N.W.2d 753, 759 (Iowa 1979).

The school district and the Department of Job Service argue that when Findley entered into the termination agreement this constituted a voluntary quit that disqualifies her from receiving benefits, since she could have had a hearing on the superintendent's recommendation. They point out that only the school board has the power to discharge a teacher and the board might not have agreed with the superintendent to discharge her. Section 279.27, The Code 1979. The district cites as an example, that on one occasion the board failed to follow the superintendent's recommendation for termination because the evidence was insufficient.

While there is a certain logic to this argument, it ignores the reality of the circumstances that actuated the agreement.

On March 1, Findley was still suspended from her job, the suspension notice having been served on January 29. This suspension was made by the superintendent acting as the executive officer of the school board. §§ 279.27, 279.20, The Code 1979. Findley concluded it was highly unlikely the board would overrule the superintendent. She further reasoned as follows: if an adjudicator ruled in her favor it would have been almost impossible to return to the school as an employee the administration had tried unsuccussfully to dismiss. Her position would be untenable even though reinstated since junior high age kids take every opportunity to find chinks in the authority structure and would surely note this one. The suspension, termination, and appeal would cause notoriety, ridicule, and great embarrassment, thus ending her effectiveness as an educator. Accordingly, she settled the issues of her continuing employment, entitlement to back pay, and the right to a hearing before the school board.

Section 370 I.C.A. § 4.25 defines "voluntary quit" as follows:

> In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. . . .

At the time Findley was notified of the superintendent's intended recommendation for her discharge, there was nothing to indicate she no longer desired to be employed. On the contrary she maintains she was forced to leave her job and entered into the agreement on March 1 in the best interest of the students, the school, the community and herself.

It is not our task to determine if there is evidence that the school board might not have agreed with the superintendent, thus disproving an assumption on which Findley acted. It would make no difference even if she was mistaken as to the outcome and its aftershock since one can act involuntarily based on misinformation. Our focus is on her state of mind at the time she agreed to terminate her employment.

We do not find that Findley's realistic appraisal of her situation on March 1 was ill-advised or unreasonable. Nor can we conclude that her depressed view of the likelihood of her returning to the classroom and her acting accordingly somehow transformed an involuntary suspension in which she was gripped into a voluntary quit of her own choosing. The circumstances do not bespeak voluntariness but rather the contrary.

The agreement itself recognizes the imminence of an unemployment benefit claim by stating that the teacher is not precluded from making it nor the school district from

resisting. Yet the school district tries to extract from the very existence of the agreement that terminated Findley's employment a proof that the termination was voluntary. We find this argument defused by the recognition in the agreement of Findley's claim.

The Supreme Court in Moulton v. Iowa Employment Security Commission, 239 Iowa 1161, 1166, 34 N.W.2d 211, 213 (1948) discussed the meaning of voluntary by quoting a Pennsylvania case as follows:

> "When we say, "he left work voluntarily," we commonly mean, he left of his own motion; he was not discharged. It is the opposite of a discharge, dismissal or lay-off by the employer or other action by the employer severing relations with his employees, to provide against which the act was mainly designed."

The facts of this case show that Findley's situation more nearly represents that of a discharged employee than an employee who has voluntarily resigned. Some recognition of this reality is found in rule 4. 26(21) of section 370 I.A.C. which provides, in part, that it shall not be considered a voluntary leaving if one given the choice of resigning or being discharged elects the former course of action. This rule should apply to situations where, as here, the discharge is reasonably likely although not assured. To hold otherwise in the area of teacher discharge is to encourage frivolous challenges to impending terminations, thereby thrusting an unnecessary burden on both the administrative and judicial process.

Findley's agreement with the school district settled her dispute as to termination of her contract. Whether a voluntary quit was also effected must be determined from all the circumstances surrounding the event. The hearing officer made no finding of fact as to voluntariness. Even if implied from the decision of disqualification, we conclude from our review of the record that there is not substantial evidence to support such a finding. The district court affirmed the agency on the gound that Findley had voluntarily elected to terminate her employment. We hold the district court erred as a matter of law in so concluding. See Ellis v. Iowa Department of Job Service, 285 N.W.2d 153, 157 (Iowa 1979). The cause is remanded to the Department of Job Service for determination of benefits as if Findley had been discharged.

Costs are assessed to respondents-appellees.

REVERSED AND REMANDED.

Johnson, J., dissents, joined by Donielson, J.

JOHNSON, J. (dissenting)

I dissent, although I agree with the majority's conclusion that the sole question before us is primarily one of law, that is, whether claimant's termination of employment constituted a voluntary quit without good cause attributable to her employer. I believe that the hearing officer and district court correctly concluded that claimant voluntarily quit without good cause attributable to her employer when she entered into the termination agreement prior to any board action on the superintendent's recommendation.

Claimant was not faced with the Hobson's choice portrayed by the majority. Rather, she was faced with a decision that necessitated balancing the risk of injury to her employment prospects due to termination against benefits of unemployment compensation. These alternatives undoubtedly placed claimant in a difficult position, but they did permit an exercise of free will. Claimant chose to forego the private hearing and to enhance her future employment prospects. She should be required to bear the costs of that decision—loss of unemployment benefits. District court's judgment should be affirmed.

Donielson, J., joins in this dissent.