IN THE COURT OF APPEALS OF IOWA

No. 7-606 / 96-2196

FILED
APR 24 1998
CLERK SUPREME COURT

TERRY L. GEORGE,
Appellant

vs.

IOWA EMPLOYMENT APPEAL BOARD and **ELLSWORTH MUNICIPAL HOSPITAL,**
Appellees.

Appeal from the Iowa District Court for Hardin County, M. D. Seiser, Judge.

The petitioner appeals the district court's judicial review decision affirming the respondent board's determination that she engaged in misconduct disqualifying her from receiving unemployment benefits. **AFFIRMED.**

John P. Whitesell and Jennifer A. Bicknese of Whitesell & Bicknese, Iowa Falls, for appellant.

William C. Whitten, Des Moines, for appellee board.

Edwin N. McIntosh and Debra D. King of Dorsey & Whitney, LLP, Des Moines, for appellee employer.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

This appeal arises from the district court's judicial review of the Employment Appeal Board's denial of unemployment benefits to appellant. The district court affirmed the board's denial of benefits, concluding appellant's conduct in refusing to work where assigned constituted misconduct. We affirm the decision of the district court in its judicial review of the agency's denial of benefits.

Factual setting. Terry L. George, a registered nurse, reported for her normal weekend assignment on the medical surgical floor of appellee hospital on Saturday, October 21, 1995. When she arrived, the supervisors on duty informed her the associate director of nursing told them George was to work in the emergency room instead of the surgical floor. George learned there was a telemetry patient on the surgical floor. From her knowledge of the nurses on duty, George believed she was the only one qualified to monitor the telemetry patient. George also learned there would be no supervisor on duty as required by hospital policy.

George called the associate director of nursing to express her concern if she worked the emergency room and left the telemetry patient without proper supervision. George also expressed concern she would be supervising the emergency room. The associate director assured George a supervisor would be arriving in four hours and there would be a supervisor on call until then. She asked George, "so you're refusing to cover ER?" George replied, "under the circumstances, yes."

The associate director called the hospital's associate administrator for clinical services to inform her George had refused her work assignment. The associate administrator called George and discussed George's concerns. She told George she would not be supervising the emergency room, just working as a staff nurse there. She also told George the assignment was "fair and reasonable," that George was well qualified, and that refusing the assignment would mean she would be replaced. George again refused the assignment. After discussion of the situation between the associate administrator and the associate director, the administrator contacted George again, directing her to go home, not to return to work on Sunday, and to meet with her on Monday. In their meeting on Monday, George was fired.

George applied for unemployment benefits. The claims deputy denied benefits, determining George was discharged for insubordination. George appealed the decision to an administrative law judge, claiming the conduct cited by the claims deputy was not "misconduct" as defined in Iowa Code chapter 96. After an evidentiary hearing, the administrative law judge affirmed the denial of benefits, concluding George was discharged for insubordination, which is "disqualifiable job misconduct."

George appealed to the Employment Appeal Board which affirmed the denial of benefits. George next sought judicial review. The district court found substantial evidence in the record that George's refusal to work in the emergency room

"constituted substantial misconduct for which she should be denied unemployment benefits." George now appeals the district court's decision, arguing her refusal to follow her employer's directives did not constitute misconduct and she had a good faith reason to reject her work assignment.

Scope of Review. Our review is governed by the administrative procedures set forth in chapter 17A of the Iowa Code. *Cobb v. Employment Appeal Bd.*, 506 N.W.2d 445, 447 (Iowa 1993). In reviewing a district court decision on the validity of agency action, we ask only whether the district court correctly applied the law. *Id.* The district court is itself acting in an appellate capacity to correct errors of law on the part of the agency. *Id.* On appeal from the district court's judicial review, we apply the standards of Iowa Code section 17A.19(8) (1995) to the agency action to determine whether our conclusions are the same as those of the district court. *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa App. 1996). The agency—not the court—weighs the evidence, and we are obliged to apply those findings broadly and liberally to uphold rather than defeat the agency's decision. *Ward v. Iowa Dep't of Transp.*, 304 N.W.2d 236, 237 (Iowa 1981). On review, the question is not whether the evidence supports a finding different from the agency's but whether the evidence supports the findings the agency actually made. *Pirelli-Armstrong Tire Co. v. Reynolds*, 562 N.W.2d 433, 436 (Iowa 1997). In other words, the agency's findings are binding on appeal unless a contrary result is compelled as a matter of law. *Id.*

When there is conflict in the evidence, we must accept the agency's findings. *Aluminum Co. of America v. Employment Appeal Bd.*, 449 N.W.2d 391, 394 (Iowa 1989). In deciding whether substantial evidence exists, we view the record as a whole. Iowa Code § 17A.19(8)(f); *Dunlavey v. Economy Fire & Cas. Co.*, 526 N.W.2d 845, 849 (Iowa 1995).

Misconduct. Concerning misconduct, Iowa Administrative Code section 370-4.32(1) states in pertinent part:

> Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, . . .

Id. An employer has the right to expect an employee to follow his directions whether the directions are delivered by the employer himself or by his designated agent. *Myers v. Iowa Dept. of Job Service*, 373 N.W.2d 507, 512 (Iowa App. 1985).

George argues her actions do not fall within the definition of misconduct because she was responsible for the telemetry patient and because she acted in good faith or for good cause. Although she asserts she was responsible for the telemetry patient, substantial evidence supports the conclusion she was not assigned to the unit where the patient was. George argues she was the only nurse on duty qualified to monitor the telemetry patient. George's assignment, however, did not include the

telemetry patient. Her duties and responsibilities did not include deciding for herself which unit to work or which patients to serve. Her sense of duty to patient care is not at issue; her response to her employer's work assignment is the issue.

George also claims she acted in good faith or for good cause because she viewed her actions as protecting the telemetry patient and the hospital. However, the hospital management had considered the patient population and staffing needs in their work assignments. George chose to refuse the explicit directions of her employer, even when warned of the consequences. The cases cited by George in support of her good faith argument are inapposite because they all involve either involuntary failure or misunderstanding. In the case at hand, George did not misunderstand her assignment or try to work in the emergency room and fail because of the job duties or the actions of another. Rather, she wilfully chose to refuse her employer's work assignment. Substantial evidence in the record supports the agency's finding George was insubordinate.

Having considered all of George's claims, whether discussed explicitly in this opinion or not, we conclude the district court was correct in affirming the decision of the Employment Appeal Board that George is not entitled to unemployment benefits.

AFFIRMED.