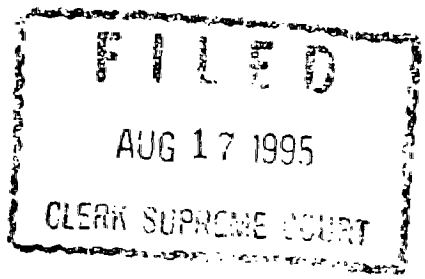
IN THE COURT OF APPEALS OF IOWA

No. 5-247 / 94-1850



JOANN M. OLBERDING,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD,

Appellee.

Appeal from the Iowa District Court for Carroll County, Joel E. Swanson, Judge.

Olberding appeals the district court's ruling on judicial review affirming the Employment Appeal Board's decision denying her request to backdate the filing of weekly claim forms supporting her claim for extended unemployment benefits. **AFFIRMED.**

William G. Polking of Polking Law Office, Carroll, for appellant.

William C. Whitten, Employment Appeal Board, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

HAYDEN, P.J.

In November 1991 the petitioner, Joann Olberding, requested regular unemployment benefits, subsequently receiving $5694 over a twenty-six-week period. In May 1992 Olberding was denied regular unemployment benefits, and it was determined she had been overpaid. Olberding claims job service failed to notify her she could have received extended benefits until the initial denial of regular benefits was reversed in August 1993. At that time she was advised to file for extended benefits. She subsequently received an extended benefit amount notice showing an effective date of June 7, 1992.

Olberding's request for retroactive extended benefits was denied by the Employment Appeal Board on November 24, 1993, and again on rehearing on December 6, 1993. The decision was based in part on the lack of evidence anyone from the agency advised Olberding not to send the forms or that Olberding could establish she had completed the work search required by the forms.

Olberding sought judicial review of the Board's decision denying her claim. After a telephonic hearing, the trial court entered a ruling affirming the Board's decision. The court noted the agency had determined Olberding was informed of the possibility of extended benefits when her regular claim for benefits expired. The court determined the respondent's decision was supported by substantial evidence.

On October 7, 1994, Olberding filed a motion to enlarge pursuant to Iowa Rule of Civil Procedure 179(b). On October 13 the trial court denied the motion. On November 10, 1994, Olberding filed a notice of appeal.

Olberding also filed an application to certify the appeal which was granted by the supreme court on December 8, 1994.

I. Standard of Review.

The scope of review in cases arising out of the Iowa Administrative Procedure Act is limited to the corrections of errors at law. *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162, 165 (Iowa 1982). A trial court decision rendered in an appellate capacity is reviewed to determine whether the trial court correctly applied the law. *Id.* This court applies the standards of Iowa Code section 17A.19(8) (1991) to the agency action to determine whether our conclusions are the same as the trial court's. *Jackson County Pub. Hosp. v. Public Employment Relations Bd.*, 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides the court shall grant relief from an agency decision unsupported by substantial evidence made before the agency when the record is viewed as a whole. *Eaton v. Iowa Dep't of Job Serv.*, 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when

a reasonable person would find it adequate to reach a conclusion. *Id.* at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings made. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 734 (Iowa App. 1986). The fact two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is unsupported by substantial evidence. *Id.*

II. Extended Unemployment Eligibility.

Plaintiff-appellant was denied extended unemployment eligibility because she failed to send the requisite claim cards to the job service agency in a timely manner. Plaintiff-appellant seeks to backdate cards for an extended eligibility period. She contends she was not informed of her possible eligibility and was denied the opportunity to secure the cards for filing. Plaintiff-appellant asserts the trial court erred in determining the agency's decision was supported by substantial evidence.

The claimant has the burden to establish she was actively seeking work and to document her searches by timely filing claim reports. *Comisky v. Department of Employment Servs.*, 425 N.W.2d 663, 664-65 (Iowa App. 1988) (claimant failed to file claim reports and was not able to establish eligibility). The administrative law judge found, and the Employment Appeal Board concurred, the claimant was informed of the possibility of extended benefits when her regular claim for benefits expired. Plaintiff-appellant proffers no evidence to support she was not informed. She contends she does

not remember being informed but provides no evidence of error made by the division of job service.

We hold the findings of the agency and trial court are supported by substantial evidence and are affirmed. The decision of the Employment Appeal Board is not affected by error of law and is affirmed.

AFFIRMED.