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JAN 25 1979
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOYCE M. BAATZ,

Petitioner-Appellee,

vs.

IOWA DEPARTMENT OF JOB SERVICE and FRITO LAY, INC., MFG. & SALES,

Respondent-Appellants.

Filed January 25, 1979

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2-61654

Appeal from Pottawattamie ourt - Leo F. Connolly, Judge.

Respondent appeals from judgment of the trial court reversing a decision of the Job Service Appeals Board and granting petitioner unemployment benefits. Affirmed in part and reversed in part.

Walter F. Maley & Blair H. Dewey, of Des Moines, counsel for appellants.

John G. Hinde, of Council Bluffs, counsel for appellee.

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

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DONIELSON, J. 2

Respondent Iowa Department of Job Services appeals from judgment of the district court reversing the final decision of the Job Services Appeal Board disqualifying petitioner, Joyce M. Baatz, for unemployment benefits because she was deemed to have voluntarily quit. Section 96.5(1), The Code, defines a voluntary quitting that disqualifies an individual for benefits when "he or she has left his or her work voluntarily without good cause attributable to his or her employer." An employee may qualify for benefits, however, if he or she leaves upon the advice of a physician, § 96.5(1)(d), The Code, or where illness results from the job making continued employment a serious danger to life or health. See McComber v. IESC, 254 Iowa 957, 119 N.W.2d 792 (1963); Rafferty v. IESC, 247 Iowa 896, 76 N.W.2d 787 (1956).

At hearing, Baatz testified that she fell and injured her back while engaged in her duties as a Frito Lay route sales person in May 1976. She did not report the accident to her employer or seek medical attention. In December 1976 she fell at home and reinjured or aggravated her previous injury, and missed 5 days of work. Her physician indicated that she could return to work if she thought she could handle it. Her employer encouraged her return and initially provided a helper for her, but Baatz left the job on January 7, 1977 after offering to continue employment in a less strenuous capacity.

The Job Services hearing officer determined that Baatz was entitled to unemployment benefits in the amount of $1160. The Appeal Board reversed the decision of the hearing officer and determined that Baatz had voluntarily left her employment without good reason attributable to her employer and had been overpaid $1160 in unemployment benefits. The district court reversed, finding that the disqualification was "unsupported by substantial evidence in the record made before the agency when that record was viewed as a whole." Section 17A.19(8)(f), The Code. The scope of our review is similar, City of Davenport v. Public Employees Relations Board, 264 N.W.2d 307, 311-313 (Iowa 1978), and we reverse.

In reviewing the agency decision pursuant to this test, we must conclude that the final agency decision is supported by substantial evidence in the record before the Appeal Board when that record is viewed as a whole. Baatz did not inform her employer of her original injury or seek any medical attention. When she injured her back at home

later, she applied for medical benefits under her Blue Cross-Blue Shield health plan, not worker's compensation. She offered no medical evidence that this injury resulted from or aggravated the previous injury which had occurred on the job. Baatz was not specifically advised to leave her employment by her physician, and an Iowa Employment Security Commission form filed on her behalf by a physician indicates she could return to work as of December 13, 1976 with prognosis noted as satisfactory. Finally, Baatz told her employer she was leaving to spend more time with her family and admitted at hearing that this at least partially motivated her leaving.

While the evidence does not compel the result reached by the majority of the Appeal Board, a reasonable mind could find substantial evidence to support the administrative finding that Baatz voluntarily terminated without good cause attributable to the employer; i.e., her illness did not result from the job making continued employment a serious health danger, **McComber**, supra, nor did she leave upon the advice of a physician, § 96.5(1)(d), The Code. Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. City of Davenport v. Public Employees Relation Board, supra at 311. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. Reisner v. Board of Trustees of Fire Retirement System, 203 N.W.2d 812, 814 (Iowa 1973).

We accordingly hold that the trial court erred in its order reversing Job Services final decision. In doing so, we must consider whether the $1160 in benefits paid to Baatz as a result of the original decision by the Job Services hearing officer is subject to recoupment by the agency. Section 96.16(4), The Code, requires Job Services to obtain repayment from a claimant who received benefits as a result of "any error." However, in Galvin v. Iowa Beef Processors, Inc., 261 N.W.2d 701 (Iowa 1978), the supreme court stated:

> We refuse to hold the legislature intended one who had followed proscribed procedures, who had been awarded benefits under the statute, and who himself was guilty of no wrong or error must pay back amounts he had received under the commission's order. 261 N.W.2d at 704.

Here, Baatz made no evasion or misrepresentation. Her claim was denied by a claims officer, and granted on reversal by a hearing officer. The $1160 she received before the

employer's timely appeal was processed were not due to any error on her part. We read **Galvin** to say that a claimant making full and accurate disclosure is not required because of a later reversal to repay the benefits received once he or she is determined to be eligible. Nor are the payments to be charged against the employer's account; the system, not the individual, bears the burden. 261 N.W.2d at 704.

We therefore reverse the trial court decree in its conclusion Baatz was entitled to unemployment benefits, and affirm the portion of the decree holding Job Services is not entitled to recover the benefits paid to Baatz under the hearing officer's decision.

AFFIRMED IN PART AND REVERSED IN PART.