FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROY ELMORE,	)	
Petitioner-Appellee,	)	
vs.	)	5-395 84-1815
IOWA DEPARTMENT OF JOB SERVICE,	)	
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Webster County - Newt Draheim, Judge.

Respondent agency appeals from the district court's reversal of the agency's decision denying the petitioner unemployment insurance benefits. **AFFIRMED.**

Walter F. Maley, Blair H. Dewey, Des Moines, and Joseph L. Bervid, Cedar Rapids, for respondent-appellant.

William H. Habhab, Fort Dodge, for petitioner-appellee.

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

OXBERGER, C.J.

The Iowa Department of Job Service appeals from a district court decision that allowed the claimant unemployment benefits and reversed the department's denial of the claim. We affirm the trial court.

The claimant, Roy Elmore, was employed as a truck driver by Dan Snell from October 27, 1983, to December 9, 1983. Prior to accepting employment, Elmore sought assurances he would be home on weekends since he had a wife and small child. Elmore received assurances he would be home on weekends, and that if for some reason he could not be home on weekends he could have time off during the week. He was further assured he could have his choice of which loads to haul. His employer also told him that the prior driver he hired regularly had roundtrips from Fort Dodge, Iowa, to Minneapolis, Minnesota, which allowed him to be home most of the time.

Once employment began, however, Elmore found he could not have weekends off, nor was compensating time off during the week available because there were other loads to haul. During the six weeks he worked, he was out of town thirty-five days and home for only one weekend when it snowed. At the end of this time, Elmore determined he would not be able to spend time at home with the job and quit.

Elmore's subsequent claim for benefits was denied after the claims deputy decided Elmore left work voluntarily because of personal reasons. The hearing officer and agency appeals board affirmed that determination. The district court on appeal held the employer misrepresented the type of work involved and willfuly changed the contract. We agree. A claimant leaves work for good cause when the type of work is misrepresented to him at the time he accepted the contract. Iowa Admin. Code § 370-4.26(23). Further, an employee leaves work for good cause when there is a change in the contract of hire:

> A change in the contract of hire. An employer's willful breach of contract of hire shall be not a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in the worker's routine on the job would not constitute a change of contract of hire.

Iowa Admin. Code § 370-4.26(1)(emphasis added). While we agree with the hearing officer's statement that it is in the nature of the trucking business that weekend work is often required, in this case the employee did not accept the work until given repeated assurances that either weekend work would not be required, or, when required, time off during the week would be available. We are to uphold the administrative findings of fact when supported by substantial evidence. Iowa Code § 17A.19(8)(f)(1985). We do not find the agency's holding supported by substantial evidence. The employer changed the contract for hire and we agree with the district court the claimant is entitled to benefits.

AFFIRMED.

All judges concur except Sackett, J., who dissents.

SACKETT, J. (dissenting)

Administrative findings of fact are binding on a reviewing court if they are supported by substantial evidence when the record is viewed as a whole. Varied Enterprises v. Sumner, 353 N.W.2d 407, 409 (Iowa 1984); Iowa Code § 17A.19(8)(f)(1985). There was substantial evidence in the record to uphold the agency's finding. Elmore voluntarily left the employment because he thought his marriage was in jeopardy. He stated that the job was not what he thought it would be, but admitted that it was not the fault of his employer. Elmore left his work without good cause attributable to his employer. I would reverse the trial court and reinstate the agency decision.