IN THE COURT OF APPEALS OF IOWA

No. 5-303 / 94-1989

MICHEL L. WALLS,

Appellee.

vs.

EMPLOYMENT APPEAL BOARD,

Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Jasper County, Darrell Goodhue, Judge.

The respondent board appeals from the district court's decision on judicial review directing a remand on petitioner's unemployment compensation claim involving a backdating request that had been denied by the board. **AFFIRMED AND REMANDED.**

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

John E. Billingsley, of Walter, Knopf & Billingsley, Newton, for appellee.

Considered by Donielson, C.J., and Cady and Huitink, JJ.

CADY, J.

This is an appeal from a district court's order remanding a claim for unemployment compensation to the Department of Employment Services. We affirm and remand.

Michel Walls filed a claim for unemployment benefits with his local job service office on December 5, 1993. He was last employed by a roofing company in West Des Moines, and had suffered a work-related injury on October 21, 1991. Walls was unable to return to work and received healing period workers compensation benefits until September 1992. At that time, doctors determined Walls had reached maximum recovery from his injuries, and released him to return to work with numerous physical restrictions. His healing period compensation was discontinued after his release and he began receiving workers compensation payments based on his permanent partial disability. Walls returned to his employer after receiving notice of his medical release, but the company had no work available for him given his restrictions.

Walls continued to receive the monthly permanent partial disability payments until November 1993. After receiving notice the disability payments would end, Walls filed his claim for unemployment benefits.

The claim for unemployment benefits filed by Walls listed his last day of work as October 21, 1991. Walls did not believe he was entitled to seek unemployment benefits while he received workers compensation benefits, and sought to backdate his

claim. The request to backdate was denied. The denial was affirmed by the Employment Appeal Board, and Walls sought judicial review.

The district court remanded the case to the Department of Employment Service to reconsider the request to backdate in light of 345 Iowa Administrative Code section 4.1 (11), which allows "workers compensation benefits" to be substituted for wages in establishing a wage base. The district court also directed the agency to consider the circumstances surrounding his termination. The district court felt backdating should have been permitted if Walls did not know he had been terminated from his employment.

On appeal, the Employment Appeal Board argues Iowa Administrative Code section 4.1 (11) does not impact the decision to deny the request to backdate. They also assert the agency decision was supported by substantial evidence, and was not affected by errors of law.

I. Scope of Review

Judicial review of unemployment cases follows the Administrative Procedure Act. *Norland v. Iowa Dept. of Job Service*, 412 N.W.2d 904, 908 (Iowa 1987). The district court acts in the capacity of an appellate court and corrects errors of law on the part of the agency. *Des Moines Independ. Community School Dist. v. Dept. of Job Service*, 376 N.W.2d 605, 610 (Iowa 1985). In our review of the district court action, we ask only whether the district court correctly followed the law. *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 404 (Iowa 1993). We apply the standards

set forth in Iowa Code section 17A.19(8) to the agency action to determine whether our conclusions coincide with the conclusions of the district court. *Id.*

Remand is an available remedy for the district court in its review of an administrative decision. Iowa Code § 17A. 19 (8) (1993). It is appropriate if an agency decision fails to disclose a sound factual and legal basis for its decision. *Des Moines Indep. Community*, 376 N.W.2d at 610-11. Moreover, remand for further consideration of the agency decision may be ordered to correct errors of law which are dispositive of the case. *Id.* On the other hand, remand is unnecessary when the question presented involves a matter of law and the disposition may be effected without further evidence or findings of fact. *Id.* Generally, the decision to remand lies within the discretion of the trial court. *See In re State and City Sales Tax Liability of Quality Service Railcar Repair Corp.*, 437 N.W.2d 209, 212 (S.D. 1989).

Although the substantive issue in this case involves the timeliness of a claim for unemployment benefits, we recognize there is no per se statutory time period requiring workers to file a claim for benefits following unemployment. Instead, eligibility for compensation is generally a product of the number of weeks worked and income earned during a statutorily defined period of time prior to the date a claim for benefits is filed with a job service office. *See* Iowa Code §§ 96.4, 96.19 (3); *See also* 81 C.J.S. Social Security § 213 (1972). Benefits are then paid during the weeks of unemployment in the benefit year which follows, based on the base period earnings.

The base period is a year beginning with the first day of the five completed calendar quarters prior to the filing of a claim and ending with the last day of the next to the last completed calendar quarter just before the filing of the claim. Iowa Code § 96.19 (3) (1993). If no wages have been earned during the base year or the level of income earned during the base year does not meet the statutory threshold, the claimant is not eligible for benefits. Thus, if a worker fails to promptly file a claim for benefits following unemployment, the base period wage amount will be diminished, and eventually fall below the level which gives rise to the right to receive benefits.

In the event wages were not received during the statutory base period preceding the filing of a claim because the claimant was receiving workers compensation benefits for temporary total disability, healing period benefits, occupational disease benefits, or indemnity insurance benefits, the base period may be expanded to include a period of time before the benefits were received. Iowa Code § 96.23 (1993). Thus, workers who return to their job following an injury and find work is no longer available can generally use their pre-injury wages to establish their base period in the computation of unemployment benefits.

Notwithstanding, the agency has promulgated a rule which permits claims to be backdated, as a means to avoid problems with establishing a base period, under a variety of circumstances, including "sufficient grounds to justify or excuse the

delay."[1] The agency in this case concluded that Walls' honest, but mistaken, belief that he could not seek unemployment compensation as long as he was receiving workers compensation benefits of any kind did not constitute sufficient grounds to excuse his delay in filing for benefits. The district court found the case involved more than Walls' belief he did not know he could have applied for unemployment benefits while receiving permanent partial disability payment. It held that under the facts the existence of sufficient grounds to excuse the delay required the agency to also determine whether Walls understood he was out of work in September 1992. There was some evidence that Walls may have believed he could eventually return to his job. He did not seek other employment after his employer did not take him back in September 1992, and he worked to improve his physical condition in hope of returning to work by the following Spring.

We cannot conclude the district court erred in remanding the case to the agency for an additional finding whether Walls knew he was out of work in September 1992. What constitutes "sufficient grounds" is broad, and depends on the particular circumstances of each case. The additional circumstances raised by the district court should be considered by the agency to fully and properly decide the issue.

We affirm the district court and remand the case to the agency to determine

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[1] Iowa Admin. Code 345-4.2(1)(b)(1) section 2

whether Walls believed his job was still available after September 1992 and, if so, whether such circumstances, together with the other facts in the case, constitute sufficient grounds to support backdating the claim.[2]

AFFIRMED AND REMANDED.

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[2]We reject the additional instruction by the district court on remand that the agency consider the impact of administrative rule 345 4 1(11) The agency was never asked to substitute calendar quarters under the rule, and the rule would not be relevant to the determination of "sufficient grounds" to excuse the delay in filing since there was no evidence Walls relied on the rule in delaying his claim Furthermore, the rule exceeds the scope of the companion statute *See Sommers v. Iowa Civil Rights Comm'n*, 337 N W 2d 470 (Iowa 1993)