IN THE COURT OF APPEALS OF IOWA

FILED
MAY 28 1987
CLERK SUPREME COURT

PATRICIA K. CHANDLER,)

Petitioner-Appellant,)

vs)

IOWA DEPARTMENT OF JOB SERVICE and VETERANS ADMINISTRATION,)

Respondents-Appellees.)

Filed May 28, 1987
6-545
86-840

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Appeal from the Iowa District Court for Polk County (No. AA 4-937) — James P. Denato, Judge.

Claimant-petitioner appeals from district court's affirmance of an appeal board decision denying her unemployment benefits on the ground she voluntarily resigned her employment without good cause attributable to the employer. **AFFIRMED.**

Carolyn F. Coleman, of Legal Aid Society of Polk County, for petitioner-appellant.

Ronald A. Bowerman and Earl E. Parsons for respondent-appellee Veterans Administration.

Walter F. Maley, Blair H. Dewey, and Joseph L. Bervid for respondent-appellee Iowa Department of Job Service.

Heard by Schlegel, P.J., and Hayden, and Sackett, JJ.

SACKETT, J.

Claimant-Petitioner Patricia Chandler appeals from a trial court's order affirming a decision of the appeal board. The board denied her unemployment benefits on the ground she voluntarily resigned her employment without good cause attributable to the employer. Chandler asserts she left her employment because of illness and the Department of Job Service erred as a matter of law in determining she was not qualified to receive unemployment benefits pursuant to Iowa Code §96.5(1)(d) (1985). We affirm.

Chandler was employed by the Veterans Administration. While employed Chandler began experiencing psychological problems and was treated by a psychiatrist. Chandler required hospitalization and she informed the Veterans Administration she wished to resign her position. She signed the papers the Veterans Administration uses when an employee resigns. Later Chandler informed the employer she had decided to take a leave of absence rather than resign. Still later Chandler again changed her mind and decided to resign and draw out the money in her retirement fund. Prior to leaving the Veterans Administration Chandler alleged she once again retracted her resignation and decided to take a leave of absence.

Chandler did receive her retirement benefits. If she had only taken a leave of absence her retirement benefits would not have been available to her.

Chandler was hospitalized. Two months later Chandler returned to the Veterans Administration with a physician's authorization to resume a 30-hour work week. She was informed her position had been filled and there were no other positions available. Chandler's physician then authorized her to return to full-time work and she again applied to the Veterans Administration. She was not rehired.

Prior to returning to the employer Chandler filed a claim for unemployment benefits. A claims deputy found Chandler was disqualified from receiving benefits because she had voluntarily quit her employment for no good cause attributable to the employer. Chandler appealed her disqualification. After a hearing, the hearing officer denied benefits and the appeal board affirmed. Chandler petitioned the district court for judicial review. The district court also affirmed, determining there was substantial evidence to support the agency's action. This appeal followed.

I.

Our scope of review in cases arising out of the Iowa Administrative Procedure Act is at law, not de novo, and thus we are limited to the record made before the agency. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534, 537 (Iowa 1985); Boyd v. Iowa Department of Job Service, 377 N.W.2d 1, 2 (Iowa App. 1985). We must determine whether the agency action was either affected by an error of law or "unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole." Iowa Code §17A.19-(8)(f) (1985); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 734 (Iowa App. 1986); Myers v. Iowa Department of Job Service, 373 N.W.2d 507, 509 (Iowa App. 1985). The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Henry, 391 N.W.2d at 734. At the same time, findings of fact and a reasoned decision by the agency are required by Iowa Code §17A.16 and are essential for purposes of judicial review. Johnston v. Iowa Real Estate Commission, 344 N.W.2d 236, 239 (Iowa 1984).

II.

In the instant case the parties do not dispute that Chandler's separation from the Veterans Administration is to be considered under the voluntary quit

provisions of Iowa Code §96.5(1) (1985). Section 96.5(1) provides a claimant is disqualified from receiving unemployment benefits if the agency finds the individual left work "voluntarily without good cause attributable to [claimant's] employer." Iowa Code §96.5(1) (1985).

The issue is whether there was substantial evidence in the record to support the agency's determination Chandler had not complied with Iowa Code §96.5(1)(d).

Section 96.5(1) sets forth certain exceptions to disqualification from unemployment benefits upon voluntarily quitting employment. Section 96.5(1)(d) provides that in spite of voluntarily quitting an employee shall not be disqualified if Job Service finds that:

> The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible. (emphasis added).

The administrative regulations provide the following reasons for a claimant leaving employment with good cause attributable to the employer:

> The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no work was available. However, where the claimant has been replaced by the employer before an attempt is made to resume working, there is no decision for the employer to make and the physician's certification is not essential to the voluntary quit decision.

Iowa Admin. Code r. 345 - 4.26(6) (1986). The regulations implementing §96.5(1) provide a voluntary quit is "presumed" where the claimant left employment

because of illness but (1) without advice of a licensed and practicing physician or (2) failed to return to the employer for employment upon recovery. Iowa Admin. Code r. 345 - 4.25(14) and (15) (1986). See also Taylor v. Iowa Department of Job Service, 362 N.W.2d 534, 538 (Iowa 1985).

In Area Residential Case, Inc., v. Iowa Department of Job Service, 323 N W.2d 257, 259 (Iowa 1982), the court determined an employee who quit her employment because of risk to her pregnancy was eligible for unemployment benefits under §96.5(1)(d) if she met the specific requirements of the statute:

1. Left employment upon advice of a physician;
2. Notified employer of necessity for absence from employment immediately upon knowing of such necessity;
3. Recovery was certified by physician;
4. Returned to employer to seek suitable work upon recovery but work was not available.

Section 96.5(1)(d), requires immediate notice as soon as the employee has knowledge of the necessity for being absent. Quenot v. Iowa Department of Job Service, 339 N.W.2d 624, 627 (Iowa App. 1983).

The hearing officer found Chandler irrevocably resigned her position to withdraw her retirement benefits and did not make arrangements or notify her employer of her intent to return at the completion of her treatment. We find substantial evidence in the record to support these findings. We determine the agency did not err in determining Chandler was not entitled to benefits under §96.5(1)(d).

AFFIRMED.