

FILED

DEC 27 1979

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARILYN HAGARTY,)

Petitioner-Appellee,)

Filed December 27, 1979

vs.)

IOWA DEPARTMENT OF JOB SERVICE,)

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2-62856

Respondent-Appellant.)

Appeal from Polk District Court - Anthony M. Critelli, Judge.

Respondent appeals reversal of disqualification of petitioner from receiving unemployment benefits, contending she either voluntarily quit her job without good cause attributable to her employer, or refused to accept suitable employment.

Affirmed.

Waiter F. Maley & Blair H. Dewey, Des Moines, for respondent-appellant.

Mark R. Adams of Dreher, Wilson, Adams & Jensen, Des Moines, for petitioner-appellee.

Submitted to Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Respondent appeals reversal of disqualification of petitioner from receiving unemployment benefits. On appeal, respondent contends petitioner's refusal of a teaching position was either a refusal of suitable work or a voluntary quit without good cause attributable to the employer. Either of the reasons, if valid, would disqualify petitioner from receiving unemployment benefits. We affirm the district court's decision.

I.

Petitioner was employed by the Dysart-Geneseo Community School District for seven years as a vocal music teacher. The Iowa Department of Public Instruction has given her "approval" to teach vocal music in grades kindergarten through eighth, which she has taught for eighteen years. She holds a Master of Arts degree in music. She is also qualified as a certified instructor and "endorsed" to teach social studies in certain grades.

Due to declining enrollment and alleged financial pressures, petitioner's position was eliminated. The school district, however, offered petitioner on April 15, 1977, a position for the 1977-78 school year to teach social studies in sixth, seventh, and eighth grades. The terms of employment concerning wages and working conditions of the new contract were the same as the old one except for the subject matter to be taught. Petitioner refused the district's offer and returned the contract unsigned on May 4, 1977. Her last day of work was May 26, 1977. She then filed an original claim for unemployment benefits.

A claims deputy found petitioner had refused to accept suitable work and thus was ineligible for unemployment benefits. A hearing officer reversed, finding the social studies teaching job was not suitable work. The appeal board reversed the hearing officer's decision. After a petition for rehearing was filed, the board vacated its decision and remanded the case to a hearing officer for further hearings and a new decision, ordering consideration of section 95.5(3), The Code 1977 (disqualification from receiving benefits due to failure to accept suitable employment). On remand, the hearing officer found the work offered petitioner was not suitable employment and held petitioner eligible for unemployment benefits. The appeal board reversed the hearing

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officer, holding petitioner ineligible to receive benefits because her refusal to accept the offered social studies position was a voluntary quit without good cause attributable to the employer, § 96.5(1), The Code 1977. The district court reversed the appeal board on two grounds. The district court found the work offered was not suitable. Further, the district court refused to accept the argument that petitioner's refusal of the social studies position was a quit; but that even if it was, the quit was for a good cause attributable to the employer. From that decision, respondent appeals.

II.

The controlling issue is whether petitioner's refusal to accept the offer to teach social studies was a voluntary quit without good cause attributable to her employer. Section 96.5(1), The Code 1977. The question of whether petitioner refused suitable employment is secondary and not determinative since the appeal board found section 96.5(3), The Code 1977, inapplicable. While this conclusion presents several problems since the hearing officer based his decision on that section, we accept the appeal board's analysis. Our analysis is thus limited to applicability of the statutory disqualification for unemployment benefit eligibility found in section 96.5(1), The Code 1977 (voluntarily quitting work without good cause attributable to the employer).

The question of whether petitioner had good cause to quit attributable to her employer is at least a mixed question of law and fact, Iowa Malleable Iron Co. v. Iowa Employment Security Commission, 195 N.W.2d 714, 717 (Iowa 1972); Deere Manufacturing Co. v. Iowa Employment Security Commission, 249 Iowa 1066, 1077-78, 90 N.W.2d 750, 757 (1958); we must therefore make our own independent determination of the statute's meaning and how it is applicable to petitioner. Ellis v. Iowa Department of Job Service, No. 62868, slip op. at 5-6 (Iowa, filed Nov. 14, 1979). However, fact-findings by the appeal board are treated as jury verdicts, Wallis v. Iowa Employment Security Commission, 219 N.W.2d 539, 540 (1974); such findings are binding on a court if supported by substantial and competent evidence. Iowa Malleable Iron Co., 195 N.W.2d at 717. We accept the appeal board's finding that petitioner quit because she refused to accept the social studies position, as it is supported by substantial and competent evidence. We are left to decide whether that action was due to good cause attributable to employer.

Generally, the phrase "good cause" means a cause justifying an employee's voluntarily leaving work; a cause that would reasonably motivate a qualified worker in a similar situation to give up his or her employment with its benefits to enter the ranks of the compensated unemployed. See Zorrero v. California Unemployment Insurance Appeals Board, 47 Cal. App. 3d 434, 439, 120 Cal. Rpt. 855, 858 (1975); 81 C.J.S., Social Security and Public Welfare § 226, at 449-50 (1977). The circumstances compelling the decision should be real, substantial, and reasonable, and the decision should be in good faith. Beyond these general standards, each case must be decided on its own facts. Id.

The unsuitability of work may be a good cause for leaving work; a cause which is attributable to the employer. See Consiglio v. Administrator, Unemployment Compensation Act, 137 Conn. 693, 697, 81 A.2d 351, 353 (1951); Forrest Park Sanitarium v. Miller, 233 Iowa 1341, 1343, 11 N.W.2d 582, 583 (1943). In Forrest Park Sanitarium the supreme court upheld the agency's finding of benefit eligibility for a claimant hired as a day nurse, whose employment was terminated by her employer. The nurse had good cause not to accept her employer's offer of employment as a night nurse, which was substantially dissimilar in its duties from the day job and which would have probably endangered her health. Forrest Park Sanitarium, 233 Iowa at 1342-43, 11 N.W.2d at 582-83.

We hold the unsuitability of the social studies teaching position to petitioner was good cause for her refusal to accept it. Factors to be considered in determining the suitability of offered work are the claimant's prior training, experience, length of unemployment, prospects for securing local work in his or her customary occupation, and any other factor that bears a reasonable relation to the failure to accept work. § 96.5(3), The Code 1977. The record shows petitioner's extensive training and experience in the teaching of music and her minimal training and non-existent experience in the teaching of social studies. The endorsement of petitioner by the Iowa Department of Public Instruction is only an authorization to perform a specific type of service at a particular grade level, 670 I.A.C. § 15.1; it is not a determination the teaching of social studies would be a suitable position for petitioner. At the time of the job offer and her subsequent refusal, petitioner was not yet unemployed. Considering her qualifications and experience, she could have reasonably expected to obtain a

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position more suited to her training, experience, and aptitude. Petitioner had good cause to reject her employer's offer since it would have required her to accept a position for which she was unqualified, thereby wasting her talents and qualifications for music teaching. The unsuitable circumstances of the social studies position justified petitioner's refusal and voluntary quit. As conditions of the position, they are attributable to her employer.

We, therefore, conclude petitioner's refusal of the social studies position was a voluntary quit, but done with good cause attributable to her employer; petitioner is entitled to unemployment benefits. We affirm the trial court's decision.

AFFIRMED.