

IN THE COURT OF APPEALS OF IOWA

No. 3-537 / 92-2012

JOHN P. DAVEY,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD and CURTICE-BURNS, INC.,

Appellees.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

The petitioner appeals from the district court's affirmance of the employment appeal board's denial of his claim for unemployment benefits. **AFFIRMED.**

Elizabeth Hart, Des Moines, for appellant.

James R. Swanger and Inga Bumbary-Langston of Brown, Winick, Graves, Donnelly, Baskerville & Schoenbaum, Des Moines, for appellee employer.

William C. Whitten and Joe E. Smith, Des Moines, for appeal board.

Considered by Sackett, P.J., and Habhab and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

KEEFE, S.J.

In October 1991 the petitioner, John Davey, was hired by Hiland Potato Chip Co., a subsidiary of Curtice-Burns, Inc. as a relief route sales person for an injured regular route salesman. The petitioner's job description included a provision requiring him to be responsible for the coverage of all shortages and overages in the inventory under his control. The position required Davey to have a bond which was funded by withdrawals from his paycheck. Davey signed an acknowledgment regarding the job description and indicated his awareness of his assigned responsibility for any shortage on his route. While servicing the route, Davey was experiencing difficulties and required the assistance of other employees with one employee having access to his account books and receipts. In addition, other employees, including his supervisor, had access to his inventory.

Approximately four weeks after Davey took over the route, Hiland determined a shortage of approximately $500 occurred on Davey's route. In a meeting with Davey, his supervisor indicated that Davey would have to pay for the shortage according to the company policy. Davey acknowledged he was responsible for $73 of the shortage but refused to pay for the remaining portion because it would involve an admission of wrongdoing and he did not feel responsible for paying the additional amount. The employer claims that Davey quit his job after refusing to pay the

entire shortage while Davey claims that he was fired on the basis of his refusal. Apparently after Davey left employment, Hiland withheld two of Davey's paychecks to cover the shortage. Davey claims that when his bond money is taken into account, Hiland has kept money which belongs to him. In addition, Davey received an offer for employment on a different route with Hiland if he paid the shortage.

Davey applied for unemployment compensation benefits. Davey was initially granted such benefits. Curtice-Burns filed an appeal. After a hearing, an administrative law judge determined that Davey voluntarily quit employment disqualifying him from receiving unemployment benefits. The judge determined that the request for payment of the shortages was reasonable and that the claimant acknowledged he was responsible for any shortages. On a split decision, the employment appeal board affirmed the administrative law judge's decision.

Davey filed a petition for judicial review challenging the board's decision. Davey claimed, in part, that the board's decision determining he was disqualified from receiving unemployment benefits was not supported by substantial evidence.

On November 17, 1992, the district court entered a decision affirming the board's decision. The district court determined that the record contained substantial evidence to support the board's decision that the

petitioner had voluntarily quit his job without good cause attributed to his employer. The district court noted that the employer's request was based on a contract in which the petitioner agreed to pay for the shortages.

On December 15, 1992, Davey filed a notice of appeal.

In considering a district court judgment in a judicial review proceeding, we determine whether the district court correctly applied the law. Sioux City Brick & Tile Co. v. Employment Appeal Board, 449 N.W.2d 634, 637 (Iowa 1989). Like the district court, we apply the standards of Iowa Code section 17A.19(8) to the agency action. Id. The agency's factual findings must be supported by substantial evidence in the record made before the agency when that record is reviewed as whole. Messina v. Iowa Department of Job Service, 341 N.W.2d 52, 59 (Iowa 1983). Evidence is substantial to support an agency decision when a reasonable person would find it adequate to reach a given conclusion. Our review is at law, not de novo. Ray v. Iowa Department of Job Service, 398 N.W.2d 191, 193 (Iowa App. 1986).

The issue in this case is whether the petitioner voluntarily quit his position or if his leaving employment was for a good cause attributable to his employer. Section 96.5 states:

> An individual shall be disqualified for benefits:
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the division of job service.

"Good cause" is determined from the facts of each case keeping in mind the stated public policy and the

fundamental purpose of the statute. Wiese v. Iowa Department of Job Service, 389 N.W.2d 676, 680 (Iowa 1986). The term means real circumstances; that is, adequate excuses that will bear the test of reason, just grounds for action, and always the element of good faith. Id. The supreme court has considered the subjective belief of the employee measured against the objective standard and concluded the key question is what a reasonable person would have believed under the circumstances. Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330, 335-336 (Iowa 1988).

In this case, petitioner knew and had acknowledged he was responsible for shortages. He did not dispute there were shortages, only the amount. Hiland offered to help track down the shortages, it offered him a different sales route and it offered to help him in any method so that he could repay the shortages. Hiland tried to keep petitioner as an employee, but it did insist he live up to his obligation to repay the shortages.

The agency found that petitioner rejected all offers of help and voluntarily quit. Our question is not, whether there is substantial evidence to support a different finding, but whether there is substantial evidence to support the finding made by the agency. Freeland v. Employment Appeal Board, 492 N.W.2d 193, 197 (Iowa 1992). Where the evidence is in conflict or where reasonable minds might disagree about the conclusion to be drawn from the

evidence, the court is bound to accept the board's findings. Id. We take all record evidence into account in our review and grant appropriate deference to the board's expertise. Id. The court must broadly and liberally apply the board's findings in order to uphold rather than defeat the decision. Id. The agency's findings are binding on appeal unless a contrary result is demanded as a matter of law. Id. See also Aluminum Co. v. Employment Appeal Board, 449 N.W.2d 391, 394 (Iowa 1989).

As noted by the district court, under the evidence a reasonable fact finder could have found that petitioner voluntarily quit his employment or could have found he was discharged. Two inconsistent conclusions does not prevent the agency findings from being supported by substantial evidence. Ray, 398 N.W.2d at 194.

We determine there is substantial evidence in the record to support the board's decision. We affirm the district court and the Employment Appeal Board. Under Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223, 227 (Iowa 1991), we do not assess costs to petitioner.

AFFIRMED.