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NOV 26 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

TIMOTHY G. McFARLAND and **KAREN K. McFARLAND,**	)	
Petitioners-Appellants,	)	Filed November 26, 1986
vs.	)	
IOWA DEPARTMENT OF HUMAN SERVICES,	)	6-298 85-1889
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Woodbury County (No. 92918) - Dewie J. Gaul, Judge.

Petitioners appeal from the district court's affirmance of the agency determination that they were ineligible for food stamps for a period of ninety days under the food stamp program voluntary quit rule. **AFFIRMED.**

Kelley A. Rice of Legal Services Corporation for petitioners-appellants.

Thomas J. Miller, Attorney General, and Daniel W. Hart, Assistant Attorney General, for respondent-appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

Petitioners, Timothy and Karen McFarland, appeal from the district court's affirmance of the agency determination that they were ineligible for food stamps for a period of ninety days under the food stamp voluntary quit rule. The McFarlands assert that because the evidence in the record indicates that Timothy was laid off from his job, the voluntary quit rule does not apply to their household. The McFarlands alternatively assert that even if Timothy had voluntarily quit his job, the evidence indicates that he had good cause for quitting within the meaning of the voluntary quit rule. The McFarlands further contend that the voluntary quit rule does not apply to them because the agency failed to make an "office contact" as required by federal regulation. We affirm.

Timothy McFarland worked as a full-time machinist at Industrial Maintenance Service from May 3, 1984, to January 25, 1985. Up to January 1985, Timothy worked considerable amounts of overtime. In early January 1985, Timothy's hours began to be reduced due to a work slowdown. In that same period, Timothy's work week dropped to four days per week.

Concerning the events of January 25, 1985, the facts are in dispute. Karen McFarland, testifying on behalf of Timothy at the agency hearing, testified that on January 25 the president of Industrial Maintenance Service, Clyde E. Mersch, informed Timothy that because work had slowed down considerably Timothy had a choice of either working one or two days a week or taking a voluntary layoff. According to Karen, Timothy considered this to be a layoff and understood that he would be recalled in a short period of time. Timothy, in a letter to the Department of Human Services, stated that because he could not support his family on a two-day work week he decided to take the voluntary layoff. Timothy asked for and received a letter of recommendation from Mr.

Mersch and a final paycheck. Timothy stated that he then told Mersch that he would be leaving at noon to file for unemployment benefits, which he received.

According to Mr. Mersch and Paul Dailey, Timothy's foreman, Timothy was told on January 25 that there might be a layoff the following Monday, but that no definite decision had been made. Mersch and Dailey stated that Timothy did not inform anyone that he was leaving, picked up his tools, and never returned. Mersch stated that Timothy was in the middle of a job when he left and that in fact the work load was such that there was no layoff the next day, nor was there a layoff the following week.

On February 1, 1985, the McFarlands filed their monthly Public Assistance Eligibility Report in which they stated that Timothy had temporarily been laid off. On February 18, 1985, the Department of Human Services notified the McFarlands that their food stamps would be cancelled for three months because Timothy had quit his employment without good cause. The McFarlands filed an appeal of this decision and benefits were reinstated pending appeal. On appeal, the hearing officer determined that Timothy had voluntarily quit his job, that there did not appear to be good cause, but that Timothy was exempt from disqualification because the department had no office contact with the McFarlands concerning the newly-adopted voluntary quit provisions between the effective date of January 1, 1985, and January 25, 1985, when Timothy left his employment.

On appeal from the hearing officer's decision, the Department of Human Services commissioner found that the McFarlands were not exempt and that the voluntary quit provisions applied to the McFarlands regardless of directive language contained in the federal regulations used for implementation of the amended rule. On petition for judicial review, the district court affirmed the agency decision.

In cases arising out of the Iowa Administrative Procedures Act, our scope of review is limited to the correction of errors at law and not de novo. Iowa Code § 17A.20 (1985). In order to uphold the decision of the Department of Human Services commissioner, such decision must be supported by substantial evidence in the record before the agency when the record is reviewed as a whole. Fernandez v. Iowa Dep't of Human Services, 375 N.W.2d 701, 705 (Iowa 1985). Evidence is substantial to support an agency's decision if a reasonable person would find it adequate to reach the given conclusion. Meads v. Iowa Dep't of Social Services, 366 N.W.2d 555, 558 (Iowa 1985). Though two inconsistent conclusions may be drawn from the record, such a possibility does not prevent the agency's finding from being supported by substantial evidence. Contract Services, Ltd. v. Iowa Dep't of Job Service, 372 N.W.2d 212, 215-16 (Iowa 1985). In order to make that determination, we apply the standards of Iowa Code section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as the district court. Jackson County Public Hospital v. Public Employment Relations Board, 280 N.W.2d 426, 429-30 (Iowa 1979).

The McFarlands first contend that there is no substantial evidence in the record to support the agency's determination that Timothy had voluntarily left his employment. We disagree.

7 C.F.R. section 273.7(n) governs the criteria upon which a voluntary quit may be found. Section 273.7(n) provides that "[n]o household whose primary wage earner voluntarily quit his or her most recent job without good cause shall be eligible for participation in the [Food Stamp Program]...." Section 273.7(n)(1) provides, in pertinent part, that "[c]hanges in employment status that result from reducing hours of employment while working for the same employer, terminating a self-employment enterprise or resigning from a job at the demand of the employer will not be considered a voluntary quit for purposes

of this rule." Therefore, the fact that where an employee's number of working hours has been reduced resulting in a change in employment status will not be considered a voluntary quit.

Timothy contends that he did not voluntarily quit but rather was laid off. Timothy, in a letter to the agency submitted into evidence at the agency hearing, stated that "I was asked to go to a two day work week or a voluntary lay off." Karen, testifying on behalf of Timothy at the agency hearing, stated that Mr. Mersch had offered Timothy "one or two days a week or a voluntary layoff." Evidence offered by Mersch and Paul Dailey, Timothy's foreman, tended to show that they informed Timothy of a layoff on the Monday following January 25, 1985, but that nothing had as yet been decided and that no layoff actually came into fruition. Mersch contended that there was plenty of work available the next day, but that Timothy never called back to inquire as to whether any work was available.

We do not believe that Timothy voluntarily quit his employment up to and including January 25, 1985. Mersch, by offering Timothy a choice of either working two days a week or taking a voluntary layoff, altered the terms of Timothy's employment, and the fact that Timothy decided to take a voluntary layoff does not of itself constitute a voluntary quit for purposes of section 273.7(n)(1). Timothy's actions subsequent to his accepting a voluntary layoff, however, indicate an intent to terminate his employment with Industrial Maintenance Service. When Timothy was informed about the possibility of a layoff, Timothy asked Mersch for a letter of recommendation because he intended to apply for a job at Rochester Products later that day. Timothy additionally asked for and received his paycheck. That same day, Timothy applied for unemployment benefits. Though Timothy would have been paid for the full working day of January 25, 1985, he chose not to return to work. At no time subsequent

to January 25, 1985, did Timothy ever contact Mersch about whether any work was available. Once Timothy chose not to return to work, we believe that Timothy therefore voluntarily quit his employment as it existed after the change in terms of employment.

The McFarlands contend, however, that the Department of Job Service ruled that Timothy was eligible for unemployment compensation due to a reduction in labor force and that it was error for the district court to uphold the agency determination that Timothy had voluntarily quit. We note, however, that there is a fundamental and substantive difference between the areas of the unemployment insurance program, which is administered by the Department of Job Service and the food stamp program. The unemployment insurance program seeks to maintain workers' purchasing power during periods of involuntary unemployment. Iowa Code § 96.2 (1985). The food stamp program seeks to alleviate hunger and malnutrition in low-income families. 7 U.S.C. § 2011.

This difference is also apparent when examining the criteria for receipt of benefits under each program. Pursuant to 370 Iowa Administrative Code section 4.26(1), a substantial change in the number of hours available for work is one criterion supporting a finding of a voluntary quitting of employment with good cause attributable to the employer. By contrast, a substantial change in the number of hours available for work will not constitute good cause attributable to the employer, and under such circumstances an employee will not be eligible for food stamps so long as the job continues to provide earnings above the minimum federal standards. 7 C.F.R. § 273.7(n)(3). Thus, while unanimity of view between administrative agencies is desirable, especially when the rights of individuals are involved, it often does not exist, and the inquiry must therefore turn to the relative powers and responsibilities afforded to each by the legislature. 2 Am. Jur. 2d § 209. Because the powers and responsibilities of the Department

of Human Services and Department of Job Service are distinct, we find no requirement that the Department of Human Services defer to a determination of the Department of Job Service on the issue of a voluntary quit.

The McFarlands next contend that even if Timothy did voluntarily quit, he did so with good cause. The McFarlands contend that Mersch could guarantee Timothy only one to two days of work per week and that as a result his potential weekly wage would not meet the minimum weekly wage requirement of 7 C.F.R. section 273.7(n)(1)(i). We disagree.

The McFarlands assert that Mersch could only guarantee Timothy one or two work days per week. Because a normal work day is considered to be eight hours, an average of eight hours per week times Timothy's hourly wage would be $46.00 per week, well below the minimum provided for by 7 C.F.R. section 273.7(n)(1)(i), which is $67.00 per week (federal minimum wage of $3.35 times 20 hours).

In a letter to the Department of Human Services, Timothy stated that at the January 25, 1985, meeting with Mersch, "I was offered to go to a two-day work week or a voluntary layoff." Similarly, in a letter to the Department of Job Service, Timothy stated that "[Mersch] said he would give me the option of working two days a week or taking a voluntary layoff." At the Human Services hearing, however, Karen testified that Timothy was guaranteed only one or two days per week. The hearing officer, averaging the number of days Timothy could have been expected to work, concluded that Timothy could have expected to work twelve hours per week. Multiplying twelve hours per week by Timothy's minimum wage of $5.75 per hour, Timothy could have expected to earn $69.00 per week, above the $67.00 minimum provided by section 273.7(n)(1)(i). Therefore, the hearing officer determined that Timothy had voluntarily quit his employment

without good cause. The agency adopted this determination in its final decision and the district court affirmed on judicial review.

We believe that the district court was correct in affirming the agency's decision that Timothy would have been paid at least as much as or more than the federal minimum requirement of section 273.7(n)(1)(i). The McFarlands did not raise the issue of good cause before the agency. In their brief submitted to the Department of Human Services commissioner on review of the hearing officer's proposed decision, the McFarlands did however use the hearing officer's estimate of $69.00 per week in their argument that they could not support their family with that amount. The McFarlands stated to the commissioner that "Mr. McFarland was given a choice by his employer of earning only $69.00 a week or accepting a voluntary layoff." We therefore believe that there is substantial evidence in the record to support the district court's determination that Timothy voluntarily quit his employment without good cause.

The McFarlands contend, in the alternative, that even if Timothy voluntarily left his employment without good cause, the disqualification provision cannot be applied to them because it was not explained to them at a "personal contact" prior to Timothy quitting his job. We disagree.

The present regulations that apply the voluntary quit provisions, codified at 7 C.F.R. section 273.7, became effective in Iowa on January 1, 1985. Before January 1, 1985, the food stamp regulations provided that the voluntary quit provisions did not apply to those households who were certified for the program at the time of the quit. 7 C.F.R. 273.7(n)(2)(ii) (1984). In pertinent part, 7 C.F.R. 273.7(n) provided that "No applicant household . . . shall be eligible for participation in the [food stamp] Program . . . ." (emphasis added). The regulations were amended in 1984 at 49 Federal Register 39035 (October 3, 1984). The new section 273.7(n) (introductory paragraph) was amended to state that

"No household . . . shall be eligible . . . ." (emphasis added). The amendment specifically made applicable the voluntary quit provisions to participating households in new sections 273.7(n)(1)(iii) and (iv). These new amendments were published on October 3, 1984, and were incorporated into the agency's rules effective January 1, 1985. VII Iowa Administrative Bulletin 949 (January 2, 1985).

These new amendments, however, failed to change section 273.7(n)(2)(i), which stated that primary wage earners in certified households were exempt from the voluntary quit provisions. To correct this contradiction, the rules were again amended at 49 Federal Register 50595 (December 31, 1984), removing the exemption for primary wage earners already certified. This amendment became effective in Iowa on April 1, 1985. VII Iowa Administrative Bulletin 1348 (March 27, 1985). Though this exemption was still in place at the time Timothy quit his employment on January 25, 1985, the agency found, and we agree, that the later amendment was merely correction of a mistake and that the later amendment was effective in Iowa on January 1, 1985.

The question remains, however, as to when the rules became applicable to those households already certified and in what manner those rules were to be applied. In support of their argument that the voluntary quit provisions are not applicable to their household, the McFarlands cite to 7 C.F.R. section 272.1(g)(63), which implemented recent changes in the voluntary quit rule, making it applicable to already participating households. 7 C.F.R. section 272.1(g)(63) provides in pertinent part:

> **Amendment 251.** State agencies shall implement the program changes required by this amendment as follows:
>
> (i) State agencies shall apply the work registration, job search, and voluntary quit provisions of this rule, amending portions of § 273.7, to new applicants no later than January 2, 1985. The provisions shall apply to participating households at recertification or at the time of office contact for any other reason.

The McFarlands apparently interpret this section to mean that the voluntary quit did not apply to them because they were not seeking recertification at the time Timothy quit his employment and furthermore that, since the voluntary quit provisions were never explained to them, the disqualification provisions do not apply. We disagree.

While we are not bound by an agency's interpretation of its own administrative rules, administrative agencies have a reasonable range of informed discretion in interpretation and application of those rules. Des Moines Independent Community School District v. Dep't of Job Service, 376 N.W.2d 605, 609 (Iowa 1985). We will not give deference to an administrative agency's interpretation of its own rules if such interpretation is plainly inconsistent with its rules. Id. In the present case, the commissioner determined that section 272.1(g)(63)(i) was directive language to state agencies regarding the mode of implementation of the voluntary quit provisions rather than an effective date provision, and the district court agreed with that interpretation. Upon our own examination of section 272.1(g)(63)(i), we believe that the agency's interpretation is correct. The voluntary quit provisions became applicable to all households in Iowa on January 1, 1985. Unlike other provisions such as section 272.1(g)(1), which provide that state agencies must convert all caseloads to the new regulations abolishing the purchase requirement of previous food stamp regulations within four months, section 272.1(g)(63)(i) provides that the amended voluntary quit provisions would be implemented at the time of recertification or as the cases came up for agency consideration for any reason. The office contact as envisioned by section 272.1(g)(63)(i) occurred when the McFarlands submitted their monthly report to the agency showing that their household had a loss of income. The voluntary quit rule as applied to the McFarlands was activated at that time.

Concerning the McFarlands' contention that the agency had to personally inform them of the changes in the voluntary quit rule, we believe that under a fair reading of section 272.1(g)(63)(i), together with section 273.7(n), no such personal contact was required in the present case.

In the present case, the McFarlands received the following notice with their January 1985 food stamp allotment:

> QUITTING A JOB
>
> If you quit a job and don't have a good reason, your household may not be eligible for food stamps for up to 3 months.
>
> * * *
>
> IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT YOUR WORKER IN YOUR LOCAL DEPARTMENT OF HUMAN SERVICES OFFICE.

Timothy subsequently terminated his employment on January 25, 1985. On February 1, 1985, the McFarlands filed their monthly Public Assistance Eligibility Report showing a loss of income. Pursuant to section 273.7(n)(1), whenever a participating household reports the loss of a source of income, the Department of Human Services must determine whether any household member voluntarily quit his or her job. In the present case, the agency, upon investigation, determined that Timothy's employment would have provided him with wages equivalent to the federal minimum wage times 20 hours, that the quit occurred within sixty days of the report, and that such quit was without good cause. 7 C.F.R. § 273.7(n)(1). The McFarlands were therefore disqualified from receiving benefits for ninety days. 7 C.F.R. § 273.7(n)(1)(v).

The first office contact occurred when the McFarlands filed their monthly report. The voluntary quit had already occurred. To therefore hold that the agency had to inform the McFarlands about the consequences of a voluntary quit when such quit had already occurred would be to severely strain the intent

of section 273.7(n)(1) and section 272.1(g)(63). The intent of these rules was to provide new applicants and participating households an explanation of the voluntary quit rule at the time of application, recertification, or upon office contact for any other reason. But the intent was to provide an explanation to those households where no voluntary quit had occurred and not to those households where a voluntary quit had already occurred.

There is no constitutional requirement that notice be given of legislatively-mandated substantive changes in welfare programs. Atkins v. Parker, ___ U.S. ___, ___, 105 S. Ct. 2520, 2528-31, 86 L. Ed. 2d 81, 90-93 (1985). Under the food stamp provisions, the regulatory agency must inform participants of their rights and responsibilities through whatever means the agencies deem appropriate. 7 C.F.R. § 272.5(b)(2). Concerning mass changes in the food stamp provisions, a notice of adverse action is not required when a household's food stamp benefits are reduced or terminated, but the state agency must send individual notices to households to inform them of the change. 7 C.F.R. § 273.12(c)(2)(ii). Therefore, the notice sent to the McFarlands with their January 1985 food stamp allotment sufficiently notified the McFarlands that voluntarily quitting a job could render their household ineligible for food stamps for ninety days.

For all the above reasons, we therefore hold that the district court was correct in affirming the Department of Human Services determination that Timothy had voluntarily quit his employment without good cause and that the McFarlands were disqualified from receiving food stamp benefits for ninety days.

AFFIRMED.

Hayden, J., concurs; Schlegel, J., dissents.