IN THE COURT OF APPEALS OF IOWA

No. 3-330 / 92-1954

FILED
JAN 25 1994
CLERK SUPREME COURT

WILLIAM RIPLEY,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD and BOOMSMA'S,

Appellees.

Appeal from the Iowa District Court for Hardin County, Dale E. Ruigh, Judge.

The petitioner appeals the district court's decision on judicial review affirming the Employment Appeal Board's decision that the petitioner was disqualified from receiving unemployment benefits. **REVERSED AND REMANDED.**

Dan Holub of Legal Services Corporation of Iowa, Waterloo, for appellant.

William C. Whitten, Des Moines, for appellee Employment Appeal Board.

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

SCHLEGEL, J.

Petitioner-appellant, William Ripley, claims he worked less than a full day and was discharged, entitling him to unemployment benefits. He appeals the district court's decision on judicial review affirming the Employment Appeal Board's decision that the petitioner was disqualified from receiving unemployment benefits. The petitioner claims: (1) the Board's decision that petitioner voluntarily quit his employment is unsupported by substantial evidence; and (2) the Board erred in basing its findings on unreliable hearsay evidence.

Our review is limited to the correction of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that determination this court applies the standards of Iowa Code section 17A.19(8) (1991) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). We review the entire record, not just the agency's findings. See Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) states that in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made

before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). 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. Id.

Ripley claims to have worked less than a full day for the employer, Boomsma's, an egg processing company. Ripley claims his supervisor, Randy Durham, told Ripley twice--in an irate manner--that Ripley was not working fast enough. Later, the same supervisor angrily told Ripley to complete his time card and go home. Ripley interpreted these directions to mean he was involuntarily discharged. Several days later, Ripley returned to Boomsma's to pick up his pay for the time he had worked.

At the hearing before the administrative law judge, Ripley testified as set out above. The employer was represented by Harold Lambert, the manager of the Boomsma's facility where Ripley had worked. Randy Durham, the supervisor that dealt with Ripley on the day he worked, did not appear and did not testify. Lambert testified that,

"As far as I'm concerned, Mr. Ripley was not terminated at all. He was just told he was going to have to work faster and put out a little bit more in order to meet the requirements of the job and it was his decision not to come back. We did not let him go." Lambert acknowledged that a foreman (such as Randy Durham) would have the authority to discharge an employee such as Ripley. The testimony of Ripley (the claimant) was as follows:

> Well, the first time there, Randy Durham, he come out there and told me that I wasn't working fast enough, that I needed to pick up the pace so I tried and did my best to pick up the pace. And about an hour after that, he come out there on the floor and in a very huffy manner and he says you need to fill out your time card and go home so as far as I know, I was fired.

With regard to whether Ripley worked a full day, as argued by Lambert, Ripley testified:

> Q: All right. Did you -- was that at the end of the day? A: No, they were still working when he -- when he come and told me this.

Lambert attempted to place in the record a time card and a paper signed by claimant to the effect that the claimant had voluntarily quit. However, the paper was not produced for the record and was not considered by the administrative law judge. The late exhibits were not considered by the district court and, while the Employment Appeal Board indicated that it did not consider those documents, it found that the claimant worked a full day--"for nine hours"--instead of a partial day, as claimed by Ripley. Since no testimony exists regarding how many hours constituted a full day, other than the time card that

was sent to the administrative law judge after the close of the record, we assume the Employment Appeal Board considered that exhibit in its determination in this case. Since the time card was unavailable for examination as to its authenticity at the time of the hearing before the administrative law judge, it is not a proper part of the record of this matter.

The decisions of the agency are final if supported by substantial evidence and correct conclusions of law. The review of agency decisions is at law and not de novo. The reviewing court must review the agency record as a whole to determine whether there is sufficient evidence to support the decision of the agency. Higgins, 350 N.W.2d at 187 (Iowa 1984).

> Notwithstanding the immense deference we accord agency factual findings, we interfere when they have no support in the record.

Larson v. Employment Appeal Bd., 474 N.W.2d 570, 572 (Iowa 1991).

We believe the record in this case does not support the Employment Appeal Board's finding that Ripley voluntarily quit his job. Instead, we believe the original hearing officer was exactly right. That officer found:

> The claimant's testimony as to the discussion he had with the supervisor is clear and cogent while the employer's evidence was based upon a person other than the supervisor involved. . . . Iowa Code section 96.6-2 imposes upon the employer the burden of establishing that a claimant is disqualified from benefits under Iowa Code section 96.5. The employer has not sustained this burden, and the claimant is not disqualified from benefits.

Lambert's testimony was based upon supposition, surmise and hearsay. The employee who had contact with the claimant did not testify. We agree with the administrative law judge that the employer failed to carry its burden of showing that Ripley voluntarily quit his employment.

We reverse the district court and remand this case to the Employment Appeal Board for the purpose of determining the amount of unemployment benefits due claimant. Claimant shall have no obligation to repay benefits already received on account of this termination.

REVERSED AND REMANDED.