FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

LOIS F. PETERSON,
Petitioner-Appellee,
vs.
IOWA DEPARTMENT OF JOB SERVICE,
Respondent-Appellant.

Filed June 24, 1980

0-139
2-64140

Appeal from Polk District Court - Ray Hanrahan, Judge.

Respondent-agency appeals district court decision modifying the agency decision disqualifying petitioner from unemployment benefits. - DISTRICT COURT JUDGMENT VACATED; AGENCY DECISION AFFIRMED.

Walter F. Maley, of Iowa Department of Job Service, Des Moines, for respondent-appellant.

Linda Pettit, Des Moines, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Respondent-agency appeals from the district court decision modifying the agency decision disqualifying petitioner from unemployment benefits by reducing the period of disqualification from eight weeks to three. The agency contends that the district court erred in concluding that the agency decision was not supported by substantial evidence and was arbitrary, capricious, and characterized by an abuse of discretion. The agency argues in the alternative that the district court erred by not applying an amendment to section 96.5(2), The Code, which was in effect at the time the district court rendered its decision but was not in effect at the time petitioner petitioned for judicial review of the agency action. Since we vacate the district court decision on the former allegation of error, we do not reach the agency's alternative contention.

Petitioner was discharged from her employment as a secretary-bookkeeper-receptionist after making a number of billing errors. She applied for unemployment benefits and was disqualified for an eight-week period because of being discharged for misconduct. Petitioner appealed that decision to a hearing officer, and, after a hearing, the hearing officer affirmed the disqualification. On appeal to the agency appeal board, the hearing officer's decision was affirmed. Petitioner filed a petition for judicial review on December 15, 1978. The district court concluded that there was no substantial evidence in the record supporting a finding that petitioner had been discharged for misconduct. The district court concluded that petitioner's disqualification for eight weeks of benefits was arbitrary, capricious, and characterized by an abuse of discretion. The district court entered its decree reducing the period of disqualification from eight weeks to three weeks on September 6, 1979.

Since there was no application made to the district court for leave to present evidence in addition to that appearing in the record before the hearing officer, the record for review is limited to matters shown before the hearing officer. Hoffman v. Iowa Department of Transportation, 257 N.W.2d 22, 25 (Iowa 1977). The district court's scope of review was governed by section 17A.19, The Code 1979. We review the district court's decision pursuant to section 17A.20, The Code 1979. We review the record in the manner specified in section 17A.19(7) and make anew the judicial determinations specified in section 17A.19(8). Hoffman, 257 N.W.2d at 25. The sole question we are

required to address is whether the district court correctly applied the law. Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979). In other words, we apply the standards of section 17A.19(8) to the agency action to determine whether our conclusions are the same as those of the district court. Id. at 429-30.

Employing that approach, we find that our conclusions are not the same as those of the district court. The district court concluded that the evidence supporting the conclusion that petitioner was discharged for misconduct was not substantial. Evidence is deemed to be substantial when a reasonable mind would accept it as adequate to reach a conclusion. City of Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978). An agency's finding may be supported by substantial evidence despite the possibility of drawing two inconsistent conclusions from the evidence. Id. Applying that reasoning, we think the agency's conclusion that petitioner was discharged for misconduct was supported by substantial evidence.

Petitioner committed several billing errors during the course of her employment. The number and extent of the errors reached the point at which petitioner withheld the knowledge of a major error, involving the failure to bill a client for a $1000 item, from her employer. Petitioner's only defense for her mistakes was that her personal problems were interfering with the conscientiousness expected of her in the performance of her duties. We think this constituted substantial evidence of petitioner's misconduct as defined in 370 I.A.C. section 4.32(1)(a). Consequently, we do not think the agency acted arbitrarily, capriciously, or in a manner characterized by an abuse of discretion in disqualifying petitioner from receiving benefits for an eight-week period pursuant to section 96.5(2)(a), The Code 1979.

We vacate the district court decision and affirm the agency decision. Consequently, we do not address the alternative issue raised by the agency of the retroactive application of an amendment to section 96.5(2)(a), The Code 1979.

DISTRICT COURT JUDGMENT VACATED; AGENCY DECISION AFFIRMED.

Dissent by Oxberger, C.J.

OXBERGER, C.J. (dissenting)

This agency has adopted rules and regulations to determine benefits available to an applicant. According to these rules of misconduct, there was insufficient evidence to support the finding that petitioner committed more than one act of misconduct. I agree with the trial court's conclusion on this point. I further agree that imposition of eight weeks forfeiture of benefits was an abuse of discretion in light of the misconduct. The trial court's decision reducing the disqualification period to three weeks should be affirmed. Therefore, I respectfully dissent.