FILED
NOV 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARY A. LYMAN,
Petitioner-Appellee,
vs.
IOWA DEPARTMENT OF JOB SERVICE,
Respondent-appellant,
and FARMLAND FOODS, INC.,
Intervenor-Appellant.

Filed November 24, 1981

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Appeal from Crawford District Court, George F. Davis, Judge.

Respondent-agency and intervenor-employer appeal the district court ruling reversing a decision by the Appeal Board of the Iowa Department of Job Service that petitioner was not entitled to unemployment benefits because of her discharge for misconduct. AFFIRMED.

Walter F. Maley and Blair H. Dewey, Des Moines, for respondent-appellant.

Russell and David H. Goldman of Rogers, Phillips & Swanger, Des Moines, for intervenor-appellant.

Robert L. Brink of Nash, Eller, Brink & Claussen, Denison, for petitioner-appellee.

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

Respondent-agency and intervenor-employer appeal the district court ruling reversing a decision by the Appeal Board of the Iowa Department of Job Service that petitioner was not entitled to unemployment benefits because of her discharge for misconduct. We affirm the district court ruling.

The agency and the employer assert that the district court erred in finding that the agency's ruling was not supported by substantial evidence. Our review in this case is limited to a determination of whether the district court made errors of law when it exercised its powers of review under section 17A.19. § 17A.20, The Code 1979. Section 17A.19 limits the district court's review to a determination of whether the agency committed any errors of law as specified in 17A.19(8). So, to determine whether the district court properly exercised its power of judicial review, "... this court applies the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. If the conclusions are the same, affirmance is in order. If they are not, reversal may be required." Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429-30 (Iowa 1979).

Section 17A.19(8)(f) specifies that the district court shall reverse or modify the agency action if that action is "unsupported by substantial evidence in the record made before the agency when the record is viewed as a whole" and § 17A.19(8)(g) specifies that the district court shall reverse or modify if the agency action is unreasonable, arbitrary, or capricious, or is characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

I. Section 17A.14(1), The Code 1979, tells us that the evidence which an agency uses to decide a case should be the kind that reasonably prudent persons are accustomed to rely upon for the conduct of their serious affairs. When we view this record, we see that the agency had Lyman's and Weaver's oral testimony before it. Lyman testified that she was attacked and acted only through reflex and in self-defense. A fellow male employee had hit her on the head with a clipboard, and her reaction was to hit him back. Weaver was the only witness to testify against Lyman, and he testified that he had no personal knowledge of the incident. The business records of the employer contained the results of an investigation of the incident made by Ray Churchill, but none of the employees who had been questioned by Churchill appeared to testify. Lyman, therefore, had no opportunity to challenge or cross-examine anyone who had personal knowledge of the incident. Such hearsay evidence is admissible under Section 17A.14, since strict adherence to the rules of evidence is not required in administrative hearings.

We do not believe, however, that the agency action is supported by substantial evidence. As we pointed out, Lyman testified she hit back because of reflex and in self-defense. Given the type of evidence offered by employer, we think that the agency action was not supported by substantial evidence.

When we view the record as a whole, the evidence supports Hearing Officer Al Van Winkle's original decision that Lyman was not fighting, that she acted in self-defense, and therefore she is not guilty of misconduct. Misconduct is defined "... as a deliberate act or omission by a worker which constitutes a material breach of duties and obligations... conduct evincing such willful or wanton disregard of an employer's interest ..." Rule 370-4.32(1) I.A.C. Lyman's actions do not fall under the definition of misconduct. We think the district court was correct when it reversed the agency because the agency action is not supported by substantial evidence. Therefore, under the standard outlined in Jackson County Public Hospital, supra at 429-30, we agree with the district court's conclusions, and affirmance is in order.

II. The agency and employer challenged the subject matter jurisdiction of the district court, saying that because petitioner did not fulfill the mailing requirement of section 17A.16(2) in the rehearing stage, the district court did not have jurisdiction to decide the case. The district court overruled the challenge to its jurisdiction, ruling that the parties had appeared and that it did indeed have subject matter jurisdiction.

The agency and the employer refer us to Record v. Iowa Merit Employment Department, 285 N.W.2d 169 (Iowa 1979), in which a petition for judicial review was dismissed because the petitioner failed to comply with section 17A.19(2), The Code 1979, when he did not mail a copy of his petition for judicial review to one of the parties of record. The dismissal was affirmed on appeal because of the jurisdictional nature of the requirements of section 17A.19(2). Id. at 173.

No similar jurisdictional requirements are specified in section 17A.16(2). In addition, petitioner met all the statutory requirements of filing a petition for judicial review. Furthermore, she could have asked for judicial review without first requesting a rehearing. Ellis v. Iowa Department of Job Service, 285 N.W.2d 153, 156 (Iowa 1979). The statute does not require that an application for rehearing be filed before seeking judicial review. Thus, since the jurisdictional requirements of section 17A.19(2) for judicial review were fulfilled and since respondent and employer were not prejudiced because the rehearing request was denied anyway, we think the trial court had subject matter jurisdiction to decide petitioner's case.

AFFIRMED.