

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 26 1989

CLERK SUPREME COURT

JUDITH L. MEYER,)

Petitioner-Appellee,)

vs.)

EMPLOYMENT APPEAL BOARD,)

Respondent-Appellant,)

and)

INDIAN HILLS COMMUNITY)
COLLEGE,)

Respondent.)

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8-255
87-1625

Appeal from the Iowa District Court for Polk County
(AA-1124), Gene L. Needles, Judge.

The Employment Appeal Board appeals a district court
decision which reversed the decision of the appeal board.
AFFIRMED.

Blair H. Dewey and William C. Whitten, Des Moines, for
respondent-appellant Employment Appeal Board.

Gerald L. Hammond of Sayre & Gribble, Des Moines, for
petitioner-appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.,
but considered en banc.

SCHLEGEL, J.

The Employment Appeal Board appeals a district court decision reversing a decision of the appeal board finding that petitioner was entitled to unemployment benefits from the date her services ended and not the last date she was paid for work. The appeal board claims: 1) there was substantial evidence in the record to support the final action of the agency; and 2) it committed no errors of law.

Petitioner Judith L. Meyer was hired on July 1, 1978, as a full-time nursing instructor by Indian Hills Community College. She was employed pursuant to a written contract which was negotiated and renewed from year to year. She worked nine months of the year, from September through May. She was not required to provide services during the last three months of her contract year; however, she was paid in twenty-four equal payments during the contract year. At the time of separation, Meyer was employed under a contract which commenced on August 25, 1985, and was to end on August 25, 1986.

On February 19, 1986, Meyer was given notice that the president of the College would recommend to the Board of Directors that her contract of employment be terminated at the end of the current school year. Meyer tendered a letter of resignation on February 20, contingent upon receiving her full contractual salary through August 25, 1986, and receiving all benefits due to her pursuant to her

contract. She was also not required to report to work on a daily basis after February 20, 1986, but was to be available for consultation until May 15, 1986. Additionally, she was free to seek employment elsewhere during this time and was free to take any job offered. The college confirmed acceptance of her resignation pursuant to the terms stated on March 12, 1986.

Meyer filed a claim for unemployment compensation in February 1986. She was denied benefits for the period of February 23, 1986, to August 25, 1986, because she left her employment prior to her scheduled date of layoff. Meyer appealed this decision. Upon hearing, a hearing officer affirmed the earlier decision, finding that Meyer had terminated the contract prior to its expiration and was thus not entitled to receive benefits until after August 25, 1986, when she would have been laid off. The employment appeal board affirmed this decision. Upon judicial review, the district court reversed the agency on the ground that under Iowa Code section 96.19(9)(a) Meyer became unemployed on May 15, 1986, when her services ended. The court concluded that Meyer became eligible for unemployment compensation on May 15, 1986.

Our scope of review in cases arising out of the Iowa Administrative Procedure Act is limited to the correction of errors at law. The review function of the district court under Iowa Code section 17A.19, is to correct errors

of law which are specified in section 17A.19(8). When we review decisions of the district court, the issue for our determination is whether the district court correctly applied the law. Budding v. Iowa Dept. of Job Service, 337 N.W.2d 219, 221 (Iowa App. 1983). In order to make that determination, 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. Jackson County Public Hospital v. Public Employment Relations Board, 280 N.W.2d 426, 429-30 (Iowa 1979). Where the facts are disputed, we will adopt the factual determinations made by the Department as long as they are supported by substantial evidence when the record is viewed as a whole. Temple v. Vermeer Mfg. Co., 285 N.W.2d 157, 160 (Iowa 1979).

Iowa Code section 96.5(1) (1987) provides that an individual is disqualified for unemployment benefits if Job Service finds that the individual has left work voluntarily without good cause attributable to the employer. Chapter 345, section 4.25(96) of the Iowa Administrative Code, which is used by Job Service to implement I.C.S. 96.(1), defines "voluntary quit without good cause" as:

[D]iscontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The burden of proof establishing the separation as a voluntary leaving of employment without good cause attributable to the employer shall be the responsibility of the employer with whom the separation occurred. The following reasons for a

voluntary quit shall be presumed to be without good cause attributable to the employer:

* * *

4.25(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

* * *

4.25(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation.

Section 4.25(40) of the Administrative Code further provides that:

Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff.

In the instant case, the hearing officer concluded that:

Notwithstanding the fact that claimant was not required to perform services after, on or about May 15, 1986, claimant was still operating under a contract of hire which was to expire on August 25, 1986. That is, the claimant was still employed regardless of her requirement not to perform services. The claimant terminated this contract prior to its expiration, and the claimant is not entitled to receive unemployment insurance benefits until after the claimant would have been laid off, to wit; August 25, 1986.

We agree that there is substantial evidence in the record to support the finding that Meyer was not required to perform services after May 15, 1988. Her resignation was tendered and accepted upon such a condition; although

she was not required to perform the day-to-day duties of a nursing instructor, she was nonetheless still required to be available for consultation, and thus provide services, through May 15th.

We disagree, however, with the conclusion that Meyer was "employed" with Indian Hills Community College through August 25, 1986, and was therefore ineligible for unemployment benefits until after this date. We agree with the district court's application of Iowa Code section 96.19(9)(a) which provides:

An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

In reaching its conclusion, the trial court followed the Massachusetts case of Town of South Hadley, et al. v. Director of Division of Employment Security, et al., 450 N.E.2d 596 (Mass. 1983), in which the Massachusetts Supreme Court considered a state statute almost identical to Iowa Code section 96.19(9)(a). Town of South Hadley concerned a teacher's eligibility for unemployment compensation during the summer months when the teacher, who had been dismissed, continued over the summer months to receive the salary due her. The Massachusetts Supreme Court held that the teacher was eligible for benefits during the summer months, notwithstanding the fact that she had elected to receive her salary for a twelve-month period instead of a nine-month period. In reaching its decision, the court stated:

Fitzgerald performed no wage-earning services during at least certain weeks in the period in question. The question then is whether she is deemed to have received remuneration in any week during the period in question. Because under G.L. c.71, section 40, a public day school teacher's compensation is treated as earned during the time when school is in session, Fitzgerald did not earn any compensation after June 23. . . . The test is not in what week the remuneration is received but in what week it is earned or to which it may reasonably be considered to apply.

Id. at 598 (emphasis added). In the case at bar, testimony was heard at the hearing that Meyer's earnings were "vested" as of May 15, and the right to payment on her employment contract would pass to Meyer's heirs upon her death prior to receipt of payment. We agree with the district court that Meyer's services ended and were earned as of May 15, 1986, and that Meyer's election to defer her compensation payments does not disqualify her from unemployment benefits.

The district court's decision is affirmed.

AFFIRMED.

Oxberger, C.J., and Sackett and Habhab, JJ., concur;
Donielson and Hayden, JJ., dissent.

DONIELSON, J. (dissenting)

I find the majority's reliance on the Massachusetts case misplaced. As noted, Iowa defines "totally unemployed" to mean any week in which: 1) the individual performs no services; and 2) no wages are payable. Iowa Code § 96.19(9)(a). Meyer's wages were payable through August 25, 1986, pursuant to her contract. Meyer would not have been totally unemployed until that date but for the fact she voluntarily quit in anticipation of her lay-off. 345 Iowa Admin. Code §§ 4.25(96), 4.25(29), 4.25(37).

Therefore, I would find that the district court misapplied the law and would reverse its decision, and reinstate the conclusion of the hearing officer.

Hayden, J., joins this dissent.