

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 29 1986

CLERK SUPREME COURT

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TERESA M. BRANDL,)

Petitioner-Appellant,)

Filed January 29, 1986

vs)

IOWA DEPARTMENT OF JOB SERVICE)

and FIRST FEDERAL SAVINGS AND)

LOAN ASSOCIATION OF FORT DODGE,)

5-518

84-1913

Respondents-Appellees.)

Appeal from the Iowa District Court for Webster County - Louis Beisser,
Judge

Claimant appeals the denial of unemployment benefits by respondent
and the trial court due to alleged misconduct. **AFFIRMED.**

Blake Parker, Fort Dodge, Iowa, for petitioner-appellant.

Walter F. Maley, Blair H. Dewey, Joseph L. Bervid and Deborah A. Dubik,
Des Moines, Iowa, for the respondent-appellee Iowa Department of Job Service.

Heard by Oxberger, C.J., Snell, and Schlegel, JJ.

SCHLEGEL, J.

Claimant Teresa Brandl appeals the denial of unemployment benefits by respondent and the trial court due to alleged misconduct. We affirm the trial court.

Claimant was an employee of the First Federal Savings and Loan Association of Fort Dodge for approximately seven years. At the time of her separation from employment she was an experienced teller, but had assumed duties such as setting up new accounts with customers and entering them into a computer. During the months immediately preceding claimant's departure, First Federal was undergoing a change in their internal structure and organization, especially regarding work assigned to its employees. Part of this change included assigning the task of opening new customer accounts to its regular tellers, rather than having one special employee assigned exclusively to this task.

Due to this reorganization, claimant was assigned new responsibilities that did not provide the customer contact her prior job had allowed. The assignment was a lateral move according to the job hierarchy of the employer and it did not change the contract for hire. Claimant worked in the same department under the same supervisor under the same conditions for the same hours and salary. The most significant difference, however, for claimant, was that her desk would have been located behind, instead of in front of the teller's cages, approximately a 50 foot move.

When initially given her new assignment, claimant refused to move, finding the task "totally unacceptable" in her words. She felt that she was being demoted because she would be doing a job that she felt could be done by a high school graduate. She felt that she possessed qualifications over and above what her new responsibilities required.

On October 8, 1982, claimant refused a request by an officer of the employer to assume her new duties. The president of First Federal asked her to begin her new job on October 11, and again on the 15th, but she adamantly refused for the same reasons. On October 15, 1982, claimant was suspended without pay until October 22, 1982. When she returned on the 22nd, she was given her job description and again was asked to assume these responsibilities, but she again refused. She was then asked to think about her position over the weekend. When she returned to her desk on Monday, October 25, 1982, she again refused to perform her new duties. Therefore, her employer terminated her employment for refusing to assume her new assignment.

On appeal, claimant asserts that her employment termination was because she voluntarily quit her job. She alleges there is not substantial evidence to support the agency's conclusion that her employer discharged her for misconduct.

The reviewing court should broadly and liberally apply those findings to uphold, rather than defeat, the agency's decision. Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 298 (Iowa 1974). These findings are binding upon the reviewing court unless a contrary result is demanded as a matter of law. Wetzel v. Wilson, 276 N.W.2d 410, 412 (Iowa 1979). The court is bound by the evidence on the record made before the agency when that record is viewed as a whole. New Homestead v. Iowa Dept. of Job Service, 322 N.W.2d 268, 270 (Iowa 1982).

The record substantially supports the agency's determination that claimant was discharged by her employer. The testimony of the employer's president, and the fact that despite repeated refusals to perform her new responsibilities claimant continued to report for work, provide substantial support for the agency's findings. It wasn't until October 25, 1982, when her employer told her that she was terminated, that claimant ceased coming to work. We therefore affirm

the agency's findings that claimant was in fact terminated and shall review this matter as a misconduct case.

The issue to be decided then, is whether claimant's refusal to accept her new duties amounts to misconduct.

Our review is limited to a determination of whether the trial court committed an error at law. Iowa Code § 17A.19(8)(3); Holt v. Iowa Dept. of Job Service, 318 N.W.2d 28, 29 (Iowa App. 1982). In this case our review is limited to a determination of whether the district court erred in finding substantial evidence in the record of misconduct on the part of claimant. Holt at 29. See Hoffman v. Iowa Department of Transportation, 257 N.W.2d 22, 25 (Iowa 1977). We take as established factual findings of the agency that have substantial support in the record. See Hoffman v. Iowa Department of Transportation, 257 N.W.2d at 25. However, we are entitled to "make anew the judicial determinations specified in § 17A.19(8)." Holt, at 29.

The Department's rule concerning misconduct is found in 370 Iowa Administrative Code 4.32(96)(1)(a), and has been cited with approval by the supreme court as accurately reflecting the legislature's intent. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 9 (Iowa 1982); Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979), cert. denied 444 U.S. 852, 100 S. Ct. 105, 62 L. Ed. 2d 68 (Iowa 1979). It provides:

Misconduct is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency,

unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute."

Especially relevant to the facts of the case before us is the part where an employee's conduct "... show(s) an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer."

An employer has every right to expect its employees to obey and accept any reasonable change in job duties and responsibilities. That employer must also have the right to allocate its personnel in accordance with company needs and available resources.

It is well established that the employer has the burden of proving misconduct which would lead to a disqualification of benefits. 370 Iowa Admin. Code 32(4); Woods v. Iowa Dept. of Job Service, 327 N.W.2d 768, 770 (Iowa App. 1982). The facts fully support the trial court's conclusion that the employer carried this burden. The only evidence of unreasonableness concerning claimant's job change is in her own mind. Because she felt her new job amounted to a demotion, she refused to accept her new duties. The evidence clearly shows that she would have remained at the same hierarchical position and under the same department head. There was neither a cut in pay nor in hours. The record demonstrates claimant's willful and deliberate refusal, without good cause, to follow a reasonable directive. We hold therefore that the trial court correctly affirmed the agency's finding of misconduct on the part of claimant, and her denial of benefits is affirmed.

AFFIRMED.