

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 20 1988

CLERK SUPREME COURT

JANE H. HANSEL,)

Petitioner-Appellant,)

vs.)

EMPLOYMENT APPEAL BOARD,)

DEPARTMENT OF EMPLOYMENT SERVICES)

DIVISION OF JOB SERVICES, AND)

DODGEN INDUSTRIES,)

8-401

88-172

Respondents-Appellees.)

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Appeal from the Iowa District Court for Humboldt County
(No. 15420) - Mark S. Cady, Judge.

Petitioner appeals the district court's decision
affirming agency action in denying unemployment benefits.
AFFIRMED.

Ronald J. Wagenaar, Legal Services Corporation of Iowa,
Mason City, for petitioner-appellant.

Blair H. Dewey and William C. Whitten for
respondent-appellee Employment Appeal Board.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

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Petitioner-appellant Jane M. Hansel appeals the trial court's decision affirming respondents-appellees Employment Appeal Board's decision denying her unemployment benefits and requiring repayment of the benefits she received.

In July 1985 petitioner was employed by respondent-appellee Dodgen Industries in a division known as Arts and Frame Enterprises. The division was formed in February 1985 after Dodgen purchased the assets of a business known as Art and Frame Company. Petitioner had been employed by the Art and Frame Company. On July 23, 1985, petitioner left her employment. Petitioner filed for unemployment benefits on July 26, 1985. Notice of claim was mailed to Art and Frame Enterprises, c/o Dodgen Industries on July 29, 1985. The claim was protested by Dodgen.

On August 12, 1985, a claims deputy found petitioner eligible for benefits. On August 12, 1985, a decision was mailed to claimant and Arts and Frame Company at an address other than Dodgen. Dodgen did not receive a copy of the decision.

On December 23, 1985, petitioner filed for a new benefit year. Dodgen protested the claim contending petitioner had been fired for misconduct. The deputy determined the issue of misconduct had been resolved in the earlier decision and that decision was final as to this

claim. Dodgen appealed that decision. A hearing was held. The officer determined the August 12, 1985 decision was not final. The officer held petitioner was discharged from her employment because of misconduct in connection with her employment and she is not entitled to unemployment and had been overpaid. The officer's decision was upheld by the district court on appeal.

On appeal to this court petitioner asks we find the district court erred (1) in finding the August 12, 1985 decision was not a final decision, (2) in affirming the agency's finding Dodgen's first protest was timely, and (3) in affirming the agency's findings claimant was discharged for misconduct. Petitioner also asks that we find the benefits need not be repaid. We affirm.

I.

The August 12, 1985 decision was never sent to Dodgen Industries or Art and Frame Enterprises, rather it was sent to Art and Frame Company at a different address than Dodgen's.

Iowa Code section 96.6(2) (1987) provides in relevant part:

. . . Unless the claimant or other interest party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with it.

Notice may be constitutionally sufficient even though not received but must at least be one reasonably calculated to accomplish its purpose. Smith v. Iowa Employment Security Comm'n, 212 N.W.2d 471, 473 (Iowa 1973). The employer is an interested party. The employer was never mailed a notice reasonably calculated to notify it of its right of appeal. See also Beardslee v. Iowa Dept. of Job Serv., 276 N.W.2d 373, 376 (Iowa 1979); Hendren v. Iowa Employment Security Comm'n, 217 N.W.2d 255, 256 (Iowa 1974); Eves v. Iowa Employment Security Comm'n, 211 N.W.2d 324, 327 (Iowa 1973). We affirm the trial court on this issue.

II.

Claimant contends the hearing officer was not correct in finding Dodgen filed a timely protest to claimant's initial application for benefits. The trial court determined it was unnecessary to address this issue because the statute provides the question of finality of the August 12, 1985 decision hinged on whether an appeal was taken not whether a protest was filed. We agree with the trial court's determination.

III.

Claimant contends there was insufficient evidence to support a finding of misconduct. We must determine whether there is substantial evidence in the record, when that record is viewed as a whole, to support the agency's final action. If so, findings are binding on the court. Hawk v.

Jim Hawk Chevrolet-Buick, Inc., 282 N.W.2d 84, 85 (Iowa 1979). The agency action is supported by substantial evidence in the record, when that record is viewed as a whole, pursuant to Iowa Code section 17A.19(8)(f) (1987). Evidence is 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); General Telephone Co. v. Iowa State Commerce Comm'n, 275 N.W.2d 364, 370 (Iowa 1979).

Claimant became argumentative with her supervisor, on July 23, 1985. She was told to go home and cool off, but continued to argue. When she left, she took samples with her. When told they belonged to the employer she became hysterical and began screaming. Ms. Hansel had received warnings concerning her argumentative conduct in the past. The actions of Ms. Hansel constitute insubordination, which is misconduct. Green v. Iowa Dep't of Job Serv., 299 N.W.2d 651, 655-56 (Iowa 1980); Warrell v. Iowa Dep't of Job Serv., 356 N.W.2d 587, 590 (Iowa App. 1984).

IV.

Claimant contends we should apply Iowa Code section 96.6(2) (1987) and she should not be required to repay benefits. This issue was not raised before the agency nor before the trial court. The issue should have been raised in the prior forms. Iowa-Ill. Gas & Elec. v. Iowa S. Com. Comm'n, 347 N.W.2d 423, 427 (Iowa 1984). We should not

decide issues which were not before the district court.

Iowa Gateway, Inc , v. Interstate Power Co., 350 N.W.2d
141, 148 (Iowa 1984).

AFFIRMED.