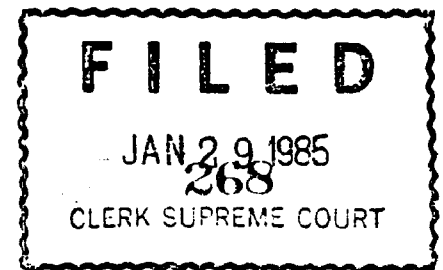


IN THE COURT OF APPEALS OF IOWA



BRAD E. LOFTON,)

Petitioner-Appellant,)

Filed January 29, 1985

vs.)

IOWA DEPARTMENT OF JOB SERVICE,)

Respondent-Appellee,)

4-483
84-617

and)

TARGET OF WEST DES MOINES,)

Respondent.)

Appeal from the Iowa District Court for Polk County - Ray Fenton, Judge.

The petitioner appeals from the district court decision affirming the department's denial of his unemployment benefits under Iowa Code section 96.5.
AFFIRMED.

David L. Dorff, Des Moines, for petitioner-appellant.

Joseph L. Bervid, Walter F. Maley, and Blair H. Dewey of Iowa Department of Job Service for respondent-appellee.

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

DONIELSON, P.J.

Petitioner appeals from the district court decision affirming the agency's determination that he was unqualified to receive unemployment benefits. Petitioner claims the record does not support the conclusion that he voluntarily quit his employment without good cause attributable to the employer. We affirm.

Petitioner, Brad E. Lofton, was employed by Target of West Des Moines from August 1981 until March 1982. His job as a full-time sales clerk required a great deal of standing and walking.

In September 1981, petitioner was hospitalized with flu-like symptoms. He was diagnosed as having cellulitis in his left leg and was kept off his feet for some time. Mr. Lofton took a medical leave of absence for approximately one month and returned to work full-time in October 1981. Due to the condition of his foot, he was unable to work full-time and subsequently negotiated part-time hours with his department manager.

In January 1982, Mr. Lofton was hospitalized for complications involving his legs. Upon his release, he was again advised to stay off his legs. In March 1982, he told the merchandising manager that he was still experiencing leg problems. Without the advice of a physician, the petitioner decided to quit since the job required him to be on his feet for too long a period of time.

After learning that he might be eligible for unemployment benefits for medical reasons, Mr. Lofton consulted a doctor. A Job Service form filled out by the doctor stated that petitioner should restrict himself to employment that would not require long hours on his feet, and that the doctor did not advise petitioner to leave his employment.

On May 11, 1982, a Job Service claims deputy held that Mr. Lofton was disqualified from receiving unemployment compensation benefits. On appeal, a hearing officer affirmed the decision and found that he had left his work voluntarily without good cause attributable to his employer since his decision was

not based upon the advice of a physician. The Job Service Appeal Board affirmed the decision and petitioner subsequently filed an application for rehearing. The rehearing was granted and it was again determined that petitioner was not entitled to unemployment benefits.

After exhausting his administrative remedies, petitioner filed for judicial review claiming, in part, that evidence did not support the decision of the hearing officer. The court affirmed the agency's decision, reasoning that petitioner's termination was not substantiated by the advice of a physician, that the employer was not responsible for petitioner's condition, that the employer did not have prior knowledge of petitioner's condition, and it did not change working conditions to his detriment. Petitioner has appealed from the district court's determination.

Judicial review of administrative agency action is limited by Iowa Code section 17A.19(8). We are bound by Job Service's findings if they are supported by substantial evidence. Evidence is substantial if a reasonable mind could accept it as sufficient to reach the same findings. McConnell v. Iowa Dep't of Job Service, 327 N.W.2d 234, 236 (Iowa 1982). "The mere possibility that the record would support another conclusion does not permit the district court or this court to make a finding inconsistent with the agency findings so long as there is substantial evidence to support it." Peoples Memorial Hospital v. Iowa Civil Rights Comm'n, 322 N.W.2d 87, 91 (Iowa 1982) (citing Woods v. Iowa Dep't of Job Service, 315 N.W.2d 838, 841 (Iowa Ct. App. 1981)).

Iowa Code section 96.5 lists the grounds for denial of unemployment benefits and provides:

1. Voluntary quitting. If he or she has left his or her work voluntarily without good cause attributable to his or her employer, if so found by the department. But he or she shall not be disqualified if the department finds that:

* * *

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing

physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible. (emphasis added).

It is clear from the record that the situation before this court does not fall within the exemption set forth in Iowa Code section 96.5(1)(d). Although the petitioner left his employment because of an illness or injury, he was not advised to do so by a physician. Our decision in this respect however does not dispose of the case. Section 96.5(1) sets forth certain situations where an employee is not disqualified from receiving benefits, but it is not an exhaustive list. Thus, we must still determine whether the petitioner left his employment with good cause.

In Shontz v. Iowa Employment Sec. Comm'n, 248 N.W.2d 88, 91 (Iowa 1976), the supreme court stated:

[A] claimant who quits voluntarily because of disability is disqualified from benefits under § 96.5(1) unless he proves his disability was either caused or aggravated by factors and circumstances associated with the employment.

Petitioner argues that the evidence supports the conclusion that his disability was aggravated by his employment. He claims that the fact that he did not leave pursuant to the advice of a physician should not preclude recovery. We cannot agree.

"Voluntary quit without good cause" is not statutorily defined, but the administrative regulations provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing 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 of 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:

* * *

(14) The claimant left because of illness, but failed to return to the employer for employment upon recovery.

(15) The claimant left because of illness but without the advice of a licensed and practicing physician.

370 Iowa Administrative Code § 4.25(14), (15) (emphasis added). Pursuant to this provision, a person leaving his place of employment due to illness is presumed to have quit without good cause if he left without the advice of a physician.

Case law indicates that this presumption can be rebutted under limited circumstances. In Ellis v. Iowa Dept. of Job Service, 285 N.W.2d 153 (Iowa 1979), the supreme court allowed unemployment benefits when an employee quit her job due to an allergy even though she did not have a physician's recommendation. Id. at 156. The claimant in Ellis worked as a housekeeper at a rectory. Id. at 154. She had an allergy to the pollen or dust on evergreen trees and had informed her employer of this problem before she was hired. Id. In spite of this, her employer placed a natural Christmas tree in the rectory and the claimant subsequently quit her job. Id.

Petitioner argues that the holding in Ellis should be extended to the case before this court. We are unpersuaded by this argument. Unlike Ellis, the petitioner's employer did not deliberately and knowingly aggravate the petitioner's disability. In fact, the employer allowed the petitioner to work part-time hours in order to alleviate the problem.

We do not dispute the fact that the employment situation involved considerable walking and standing which conceivably would aggravate the petitioner's disability. The fact remains, however, that the petitioner chose to leave his job without a physician's recommendation. Absent extenuating circumstances such as those that existed in Ellis, we must presume the petitioner

left without good cause. A decision to the contrary would be inconsistent with the administrative regulations and would only serve to encourage "self-diagnosis" as a basis for quitting a job and receiving unemployment benefits.

Accordingly, we conclude that the agency's determination of denial of unemployment benefits is supported by substantial evidence.

AFFIRMED.