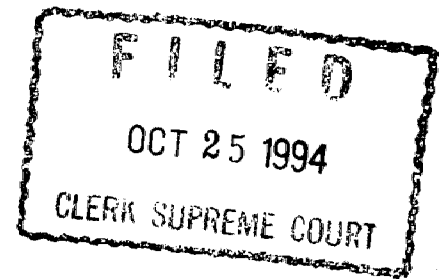


IN THE COURT OF APPEALS OF IOWA

No. 4-362 / 94-0048



KELLY E. SPEAR,

Petitioner-Appellant,

vs.

**EMPLOYMENT APPEAL BOARD,
and TWO BROTHERS RESTAURANT,
AMFIALI RESTAURANT, INC.,**

Respondents-Appellees.

Appeal from the Iowa District Court for Buchanan
County, Peter Van Metre, Senior Judge.

The petitioner appeals from the district court's ruling
on judicial review affirming the employment appeal board's
decision determining that the petitioner was disqualified
from receiving unemployment benefits. **AFFIRMED.**

Van T. Tran, Legal Services Corp. of Iowa, Waterloo,
for appellant.

Joe E. Smith, Employment Appeal Board, Des Moines, for
appellees.

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

SACKETT, J.

The question in this appeal is whether there is substantial evidence supporting the Employment Appeal Board's decision petitioner-appellant Kelly E. Spear quit her job and is not entitled to unemployment benefits. An administrative law judge found she was entitled to benefits. The Employment Appeal Board held she was not entitled to benefits. The district court found there was substantial evidence supporting the Board's decision, and we agree. Affirmed.

Kelly, a four-year¹ employee of Two Brothers Restaurant, had a serious personal matter that required her to be absent from her employment. She was scheduled to work December 12 and 13, 1992. Kelly said her employer gave her permission to miss work on December 12 and 13. Her employer testified to the contrary. She did not appear as scheduled on these two days but did come in for clean up, though not scheduled, on the morning of December 12, 1992. Kelly was not put on the next week's schedule. Kelly testified she called her employer on December 14 to ask what time she was scheduled to work and was told she had been removed from the work schedule. Kelly said when she asked for an explanation her employer said he did not put her on the schedule because she had not reported to

1. The Employment Appeal Board found Kelly had only been employed for two years. The employer had testified at one point Kelly had worked for him two years. However, the length of employment is not relevant to any issue.

work on December 12 and 13. She did not tell him she was quitting. Kelly said because her employer had a practice of discharging waitresses by removing them from the work schedule, she believed she had been fired and did not report for further work, but went in the next day to pick up her check. Kelly said her employer was there but did not discuss the work schedule or her employment with her.

Kelly's employer testified differently. He said when Kelly asked why she was not put on the schedule, he said he didn't know where to put her and to come in the next day to discuss it and he would put her back on the schedule.

The Board accepted the employer's version of the facts and found, "The employer asked the claimant [Kelly] to come to the work place on Monday, December 14, 1992, to discuss her situation and to tell the employer when she would be available for work. The claimant did not come into the work place." The Board then concluded she had voluntarily quit and was disqualified from benefits under Iowa Code section 96.5(1)(1993).

Kelly first contends there was not substantial evidence to support the decision. The scope of review in cases arising out of the Iowa Administrative Procedures Act is limited to the corrections of errors at law. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 165 (Iowa 1982). A district court decision rendered in an appellate capacity is reviewed to determine whether the district court correctly applied the law. Id. To make that

determination this court applies the standards of Iowa Code section 17A.19(8) (1991) to the agency action to determine whether our conclusions are the same as the district court's. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979). The scope of review encompasses a review of the entire record and is not limited to the agency's findings. Higgins v. Iowa Dep't of Job Serv., 350 N.W.2d 187, 191 (Iowa 1984).

Iowa Code section 17A.19(8)(f) provides in a contested case the court shall grant relief from an agency decision which is unsupported by substantial evidence made before the agency when that record is viewed as a whole. Eaton v. Iowa Dep't of Job Serv., 376 N.W.2d 915, 916-17 (Iowa App. 1985). Evidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion. Id. at 917. The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Henry v. Iowa Dep't of Job Serv., 391 N.W.2d 731, 734 (Iowa App. 1986). The fact two inconsistent conclusions can be drawn from the evidence does not mean one of those conclusions is unsupported by substantial evidence. Id. The findings of the Board are supported by substantial evidence.

Kelly next contends she should be qualified for benefits under Iowa Code section 96.51(1)(f) which provides:

An individual shall be disqualified for benefits:
 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the division of job service. But the individual shall not be disqualified if the division finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the division, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

There is no evidence Kelly came back in the work place and offered her services. There is no evidence to support the application of this section.

Kelly's next contention is there were factual errors in the Board's decision. None of the errors are relevant to the decision.

Kelly's last contention is the administrative law judge was in a better position to make factual findings than the Employment Appeal Board. We disagree. See Iowa State Fairgrounds Sec. v. Iowa Civil Rights Comm'n, 322 N.W.2d 293, 295 (Iowa 1982).

AFFIRMED.