IN THE COURT OF APPEALS OF IOWA

No. 9-116 / 98-717
Filed August 27, 1999

FILED
AUG 27 1999
CLERK SUPREME COURT

BRETT VASEY,

Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD and JEFFREY N. SMITH d/b/a MARION INSULATION CO.,

Respondents-Appellees.

Appeal from the Iowa District Court for Linn County, Thomas M Horan, Judge.

The petitioner appeals from the district court's ruling on judicial review affirming the respondent board's ruling that the petitioner was disqualified from receiving unemployment benefits because he voluntarily quit his job. **AFFIRMED.**

Tim R. Jackson of Legal Services Corporation of Iowa, Cedar Rapids, for appellant.

Anita M. Garrison, Des Moines, for appellees.

Considered by Sackett, C.J., and Vogel, **and Zimmer, JJ.**

000300

ZIMMER, J.

Brett Vasey appeals from a district court ruling on judicial review affirming the Employment Appeal Board's decision that he was disqualified from receiving unemployment benefits because he voluntarily quit his job without good cause attributable to his employer. We affirm.

I. Backgrounds facts and Proceedings. The petitioner, Brett Vasey, worked as an insulation installer for Marion Insulation Company from June 1, 1995, until he quit on or around February 28, 1997. On April 23, 1997, Vasey applied for unemployment benefits. His claim was denied by a representative of Iowa Workforce Development on the basis that he had voluntarily quit his job without good cause attributable to his employer. *See* Iowa Code § 96.5(1) (1997).

Vasey appealed this decision and a hearing was held before an Administrative Law Judge. He testified he worked full time while his father owned the company, but that after Jeffrey Smith became the owner, his hours were reduced to an average of 29.5 per week because additional employees were hired. He contended the reduction in hours amounted to a change in the contract of hire and that the reduction forced him to quit his job. He also claimed his already-earned vacation time was taken away by the new owner and that he had been denied a guaranteed pay raise. The employer countered that Vasey's hours varied and that the reduction was attributable to the seasonal nature of the company's work. He also testified that while Vasey had been guaranteed a raise, no date had been set. He further stated that had Vasey remained

on the job, he would have received his raise within a couple of weeks. Both parties agreed Vasey had voluntarily quit.

The ALJ found Vasey had voluntarily quit his job, the employer's business was seasonal, Vasey's hours varied, and that Vasey had never been guaranteed a certain amount of hours by the employer. On this basis, the ALJ concluded Vasey had not shown good cause attributable to his employer and affirmed the denial of benefits.

The Employment Appeal Board (EAB) adopted the ALJ's findings of fact and conclusions of law, and summarily affirmed the ALJ's decision. On March 2, 1998, the district court affirmed the decision of the EAB and dismissed Vasey's petition for judicial review.

Vasey now appeals. He contends the seasonal nature of the employer's business is not legally relevant as to whether he should be denied benefits. He argues that even if it is relevant, the record does not support the finding the employer's business was seasonal. He further contends the reduction in the claimant's hours constituted a change in his contract of hire, that for this reason he voluntarily quit his job with good cause attributable to this employer, and that he is therefore eligible for unemployment benefits.

II. Scope of Review. Our review of unemployment benefit cases is governed by the administrative procedures set forth in chapter 17A of the Iowa Code. *See Dico, Inc. v. Employment Appeal Bd.*, 576 N.W.2d 352, 354 (Iowa 1998). Our authority to review a district court's review of an agency ruling derives from Iowa Code section

17A.20. *See* Iowa Code § 17A.20 (1997). We review agency action under the provisions of Iowa Code section 17A.19(8) to determine whether our conclusions are the same as those of the district court. *See Cobb v. Employment Appeal Bd.*, 506 N.W.2d 445, 447 (Iowa 1993). We will grant relief where substantial rights of a party have been prejudiced because the agency action is in excess of the agency's statutory authority, is unsupported by substantial evidence on the whole record, is unreasonable, arbitrary, or capricious, or is affected by other error of law. *See* Iowa Code § 17A.19(8) (1995); *Dico, Inc. v Employment Appeal Bd.*, 576 N.W 2d at 354; *Cobb v. Employment Appeal Bd.*, 506 N W 2d at 447.

Evidence is substantial if reasonable minds would accept it as adequate to reach the same finding. *See Cobb v. Employment Appeal Bd.*, 506 N.W 2d at 447 The question is "not whether evidence might support a different finding, but whether the evidence supports the findings . actually made." *Norland v. Iowa Dep't of Job Service*, 412 N.W.2d 904, 908 (Iowa 1987).[1] We will not interfere with factual findings unless the evidence is uncontradicted and reasonable minds could not draw different inferences. *See Longford v. Kellar Excavating & Grading, Inc.*, 191 N.W.2d 667, 668 (Iowa 1971); *see also Norland v. Iowa Dep't of Job Service*, 412 N.W.2d at 908.

III. Review of Agency's Decision. An individual shall be disqualified for unemployment insurance benefits if he or she left work voluntarily without good

[1] The Iowa Department of Job Services is now known as the Workforce Development Department.

cause attributable to his or her employer. *See* Iowa Code § 96.5(1) (1997); *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660, 661–62 (Iowa 1993). Good cause may exist if it is shown the employer has made a substantial change in the terms or conditions of the contract of hire. *See* Iowa Admin. Code r. 871—24.26(1) (1997), *Wiese v. Iowa Dep't of Job Service*, 389 N.W 2d 676, 679 (Iowa 1986).

> Iowa Administrative Code regulation 871—24.26(1) provides in pertinent part
>
> > The following are reasons for a claimant leaving employment with good cause attributable to the employer:
> >
> > *A change in the contract of hire* An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be *substantial in nature and could involve changes in working hours*, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Admin. Code r. 871—24.26(1) (emphasis added). In *Dehmel v. Employment Appeal Bd.*,433 N.W.2d 700, 703 (Iowa 1988), the Iowa Supreme Court held a substantial reduction in hours or pay is considered a change in the contract of hire and will give an employee good cause for quitting. It held even though a reduction in working hours may be due to poor economic conditions beyond the control of the employer, such reduction is nevertheless considered a change in the contract of hire and the employee's quitting will be found to be for good cause attributable to the employer. *See Dehmel v. Employment Appeal Bd.*, 433 N.W.2d at 703.

The parties do not dispute Vasey voluntarily quit his job. Rather, they dispute whether his quit is attributable to his employer on the basis that his employer willfully

breached his contract of hire by changing its terms by substantially reducing his hours where the motivation for the reduction in hours was a seasonal change in market demand for the business's services.

Vasey's brief on appeal discusses at length the seasonal nature of the employer's business. He claims under *Dehmel* his employer cannot challenge the award of unemployment benefits on the basis that his hours were cut because of seasonal reductions in market demand for the employer's services. He also contends (1) the record does not support the factual finding his employer's business is seasonal in nature and (2) that because he was unrepresented by counsel, the ALJ had a heightened duty to flesh out facts regarding the employer's claim that the business is seasonal. *See Baker v. Employment Appeal Bd.*, 551 N.W.2d 646, 648 (Iowa App. 1996).

We need not address these arguments. Even assuming we agreed with Vasey, his claim for benefits on the basis of his employer's change in the contract of hire fails for a more fundamental reason.

Vasey claims his hours were reduced from over forty to just under thirty per week. While there is no "talismanic percentage figure that separates a substantial reduction from one that is not," we agree with Vasey that under *Dehmel*, a twenty-five percent reduction in working hours could constitute a substantial change. *See Dehmel v. Employment Appeal Bd.*, 433 N.W.2d at 703. However, his appeal is not aided in this respect. The key to the court's decision in *Dehmel* was that the employee had been originally hired on the understanding that he would be working

full time. *See Dehmel v. Employment Appeal Bd.*, 433 N.W.2d at 702. The court found support for its holding in an Alabama Civil Appeals decision which held "[t]he motivation of the employer in eliminating overtime is immaterial, in this instance, when the basis of employment centered around the *guarantee* of overtime." *Dehmel v. Employment Appeal Bd.*, 433 N W 2d at 703 (quoting *Tombigbee Lightweight Aggregate Corp. v. Roberts*, 351 So.2d 1388, 1390 (Ala. Civ. App. 1977)) (emphasis added). Thus, unemployment benefits were awarded to an employee who voluntarily quit his job due to reduced hours (attributable to economic downturn) *because* the employee had been hired on the understanding that he would work full time In this case, we are not presented with analogous facts.

In its ruling the ALJ made findings of fact concerning the contract of employment. It concluded Vasey had never been guaranteed a certain number of hours. This conclusion is supported by the record. There is no evidence Vasey had actually been guaranteed or hired v ith the understanding he would receive full time work. Vasey never testified to this fact nor did he present a written contract of employment. Neither Carl Vasey (the previous owner who originally hired claimant) nor Jeffrey Smith testified Brett Vasey had been hired with the understanding or on the guarantee he would work full time.

Nor does indirect evidence adequately support the conclusion Vasey had been guaranteed full time work. Vasey testified his hours were cut by more than twenty-five percent, from forty hours per week to 29.5 hours per week. Though Vasey argued to the contrary in district court, Smith never agreed Vasey had worked forty

or more hours per week while Carl Vasey owned the company. The ALJ concluded Vasey's hours had actually varied. Even if we assume Vasey averaged forty hours per week, we do not believe this alone is sufficient to prove he had actually been implicitly guaranteed those hours.

Because it has not been established Vasey was promised, guaranteed or otherwise hired with the understanding he would work full time, it cannot be concluded his reduction in hours constituted a change in his contract of hire Therefore, on this basis, it cannot be shown Vasey's voluntary quit was for good cause attributable to his employer He is therefore ineligible for unemployment insurance benefits. Our conclusion is supported by prior case law indicating that in order for an employee to show good cause attributable to the employer on the basis of a substantial change in the contract of hire by a reduction in hours or pay, it must be established what the employee's contract promised or required. *See generally Dehmel v. Employment Appeal B.*, 433 N.W.2d 700; *Wiese v. Iowa Dep't of Job Service*, 389 N.W.2d 676, 681 (Iowa 1986); *Taylor v. Iowa Dep't of Job Service*, 362 N.W.2d 534, 540 (Iowa 1985).

Even if the evidence could support a contrary finding that Vasey had been guaranteed full time work, reversal would not be required because the evidence nevertheless still supports the finding made by the ALJ that he had not been guaranteed full time work. *See Kiesecker v. Webster City Custom Meats*, 528 N.W.2d at 110 ("The question is not whether evidence might support a different finding, but whether the evidence supports the findings actually made."); *Woods v. Iowa Dep't of*

Job Service, 315 N.W.2d 838, 841 (Iowa App. 1981) ("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.")

The ALJ stated the evidence relied upon and the reasons for his conclusions. Vasey did not argue to the district court and does not argue on appeal that the ALJ failed to properly develop the record with regard to whether his contract of hire guaranteed or promised him full time work. *See Baker v. Employment Appeal Bd.*, 551 N.W.2d at 648. We determine the ALJ's decision is supported by substantial evidence and is not affected by errors of law. The decision denying Vasey unemployment insurance benefits is therefore affirmed.

AFFIRMED.