

IN THE COURT OF APPEALS OF IOWA

No. 8-559 / 97-2032

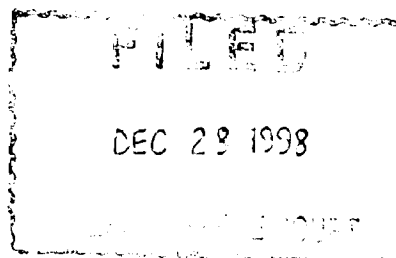
GEORGE PARKER,

Petitioner-Appellant,

vs.

**EMPLOYMENT APPEAL BOARD and
WESTERN LIVESTOCK EXPRESS INC.,**

Respondents-Appellees.



Appeal from the Iowa District Court for Woodbury County, James D. Scott,
Judge.

Petitioner appeals from the district court's ruling on judicial review affirming respondent Board's decision denying petitioner's claim for unemployment benefits.

AFFIRMED.

Lisa F. Fisher and Tim E. Jackson, Legal Services Corp., Cedar Rapids, for
appellant.

Anita M. Garrison, Des Moines, for appellee.

No appearance by employer.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Petitioner George Parker appeals from the district court's ruling on judicial review which affirmed the decision of respondent Employment Appeal Board denying his claim for unemployment benefits. We affirm.

Parker was employed as a truck driver for Western Livestock Express, Inc. from February 27, 1995 until May 23, 1996. On May 23, 1996, Parker was dispatched by his supervisor, Steve Carlson, to pick up a load at the IBP plant in Dakota City and deliver it to Waterloo. Before leaving, Parker went to the shop to speak with the general manager, Brock Ackerman, about the condition of his truck. Parker claimed the truck seemed to "wander" and "shimmy." Ackerman responded that the truck had front-end air suspension and was different from the rest of the fleet. He further stated the truck was in proper road condition.¹

According to Parker's own testimony, one thing led to another with Parker referring to the truck as a "piece of shit." Ackerman responded that his fist still hurt from "hitting the last guy that called that truck a piece of shit." The conversation ended with Ackerman telling Parker he could seek employment elsewhere if he did not like the condition of the equipment. Parker went to Carlson and turned in his fuel cards and other company equipment. He told Carlson it was his last day of work but did not state he had been discharged. Parker then left.

¹ Supervisor Carlson later testified before the Administrative Law Judge the truck was properly checked over and approved for the road.

Parker filed for unemployment benefits and claimed he had been terminated from his job. Parker's claim for benefits was denied throughout the administrative proceedings on the ground he had voluntarily quit his employment without good cause attributable to the employer. Parker timely filed a petition for judicial review which was denied by the district court.

I. STANDARD OF REVIEW. Review of an agency finding is at law and not de novo. *Diggs v. Employment Appeal Bd.*, 478 N.W.2d 432, 433 (Iowa 1991). Agency decisions may be reversed if an individual's substantial rights have been prejudiced and if the action is unsupported by substantial evidence or affected by errors of law. Iowa Code § 17A.19(8) (1997). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Aluminum Co. of America v. Employment Appeal Bd.*, 449 N.W.2d 391, 394 (Iowa 1989). The reviewing court should liberally apply the agency's findings in order to uphold rather than defeat the decision as long as the record shows the agency did not act in an arbitrary or capricious manner, commit an error of law, or otherwise violate Iowa Code section 17A.19(8). *Dubuque Community Sch. Dist. v. Public Employment Relations Bd.*, 424 N.W.2d 427, 431 (Iowa 1988).

II. VOLUNTARY QUIT ISSUE. Iowa Code section 96.5(1) 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 department.

Iowa Code § 96.5(1). The burden of proof is on the employer to show a claimant quit without good cause attributable to the employer. *Taylor v. Iowa Dep't of Job Servs.*, 362 N.W.2d 534, 541 (Iowa 1985).

The Administrative Law Judge found the following events occurred:

Eventually Mr. Ackerman told Mr. Parker that he could seek other employment if he did not like the condition of the equipment. Mr. Parker left. He returned to Operations Director Steve Carlson and turned in his fuel cards and other company equipment. He did not tell Mr. Carlson that he had been discharged. He assured Mr. Carlson that the separation had nothing to do with him. In the meantime, Mr. Ackerman had called Mr. Carlson to advise him that Mr. Parker had resigned.

Parker, himself, testified at the hearing as follows:

And he says as far as that is concerned he said you just as well go someplace else and look for employment. And at that moment I thought, well, *this must be where I'm going to be discharged*, so I never said no more to him. I picked up my briefcase. I walked back to the office. I met with Steve Carlson in the office. We went outside, we talked on the step and I said I *guess* this is it, and he said, what happened, and I didn't -- I didn't answer him, I just said, well, I *guess* this is my last day of work here. (Emphasis added.)

The Administrative Law Judge and the Employment Appeal Board concluded Parker had voluntarily quit his employment without good cause attributable to his employer. The district court agreed and denied Parker's petition for judicial review. The district court judge concluded Ackerman's actions and statement were "at best equivocal." He further noted Parker did not at any time state Ackerman had fired him. When given a chance to explain to Carlson what had happened, Parker stood mute. He merely "guessed" it was his last day of work and left.

We agree with the ruling of the district court that the decision of the Board is supported by substantial evidence in the record and the agency decision contains no errors of law. We accordingly affirm the district court on this issue.

III. HEARSAY ISSUE. Parker argues the administrative record in this case is composed solely of hearsay evidence. As such, he argues the reliability test as set forth in *Schmitz v. Iowa Dep't of Human Servs.*, 461 N.W.2d 603, 608 (Iowa App. 1990) must be applied. We disagree. It is true certain hearsay testimony was elicited from Steve Carlson.² However, the record in this case is made up primarily of Parker's own testimony as well as the first-hand observations of events as testified to by Carlson. The record supports the decision of the district court without reference to the hearsay matters. Even so, the hearsay in this case was admissible and the weight to be given to it was properly left to the fact finder. *Id.* at 608.

AFFIRMED.

² This testimony concerned certain statements made by Brock Ackerman.