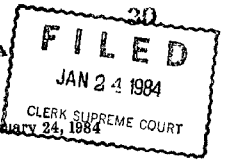
IN THE COURT OF APPEALS OF IOWA



ALBERT P. GREEN,	)	
Petitioner-Appellant,	)	Filed January 24, 1984
vs.	)	
IOWA DEPARTMENT OF JOB SERVICE and WENGERT TRANSPORTATION, INC. d/b/a CITY DELIVERY,	)	3-393 83-393
Respondents-Appellees.	)	

Appeal from the Iowa District Court for Linn County - Thomas L. Koehler, Judge.

Petitioner appeals from the district court decision on judicial review affirming the decision of respondent agency disqualifying him from receipt of unemployment benefits. AFFIRMED IN PART AND REVERSED IN PART.

Thomas M. Gillespie, Irvine, Currell, Gillespie & Broz, Cedar Rapids, Iowa, for petitioner-appellant.

Walter F. Maley, Des Moines, Iowa, Blair H. Dewey, Des Moines, Iowa, and Edmund Schlak, Jr. Des Moines, Iowa, for respondents-appellees.

Heard by Oxberger, C.J., Donielson and Sackett, JJ.

SACKETT, J.

Petitioner, Albert Green, appeals from the district court decision on judicial review affirming the decision of respondent agency disqualifying him from receipt of unemployment benefits.

Green was employed by Wengert Transportation to work on a 4:00 p.m.-to-midnight shift at a salary of $200 per week, but was required to work some overtime hours for no additional pay. Green quit and obtained new employment at West Side Salvage on a day shift at a salary of $3.60 per hour plus overtime pay. He was discharged from West Side Salvage on October 26, 1981, and filed for unemployment benefits on October 27.

Both Wengert and West Side were base period employers. West Side protested the payment of benefits based on its claim that Green had been discharged for misconduct. Wengert protested payment of benefits on the ground that Green had quit voluntarily without good cause attributable to the employer. The Job Service's claims deputy denied benefits in both cases based upon the reasons presented by the employers. Both decisions were appealed and were subsequently affirmed by the hearing officer. The decisions were modified and affirmed by the Job Service Appeal Board.

Petitions for judicial review were filed by Green. The district court affirmed the agency's decision with respect to Wengert Transportation. This appeal followed.

Green asserts on appeal: (1) that his quit was not voluntary and with good cause attributable to the employer, due to the employer's violation of federal wage and hour laws; (2) that substantial evidence fails to support a finding that he quit to obtain other, rather than better, employment and thus was ineligible for benefits under Iowa Code section 96.5(1)(a); and (3) that under Iowa Code section 96.15(2) the costs on judicial review should not have been assessed against him.

I. Scope of Review

We note that the district court, when exercising the power of judicial review conferred by section 17A.19 of the Iowa Code, is itself functioning in an appellate capacity to correct errors of law, as specified in section 17A.19(8). Peoples Memorial Hospital v. Iowa Civil Rights Commission, 332 N.W. 2d 87, 91 (Iowa 1982). Thus, when this court reviews a decision of a district court rendered pursuant to section 17A.19, the sole question is whether the district court correctly applied the law. Id. In order to make that determination, this court applies the standards of section 17A.19(8) to the agency decision to determine whether this court's conclusions are the same as those of the district court. Id. We are bound by the agency's findings of fact if they are supported by substantial evidence. Evidence is substantial if a reasonable mind could accept it as sufficient to reach the same findings. The fact that a different conclusion could also have been reached is irrelevant. New Homestead v. Iowa Department of Job Service, 332 N.W. 2d 269, 270 (Iowa 1982).

II. Voluntary Quit

We must first determine whether the district court correctly decided that Green voluntarily left Wengert Transportation without good cause attributable to the employer. See Iowa Code §96.5(1). If so, he is disqualified from receiving benefits.

A. Illegal contract. It is Green's position that he did have good cause for quitting which was attributable to the employer because his decision to quit was based on the employer's "direct violation of federal law in failing to pay overtime wages." Green contends that the agency's failure to allow benefits amounts to ratification of an "illegal contract" and that, because the agency's actions fail to recognize the supremacy of federal law, they must be reversed.

The hearing officer, after considering Green's testimony, found:

> . . . the claimant voluntarily left his employment solely on the ground of dissatisfaction with the wages and because he was not getting overtime . . .

The hearing officer then applied the Iowa Administrative Code, section 370-4.25(96), which provides:

> The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> * * *
>
> 4.25(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Because the hearing officer found that Green's sole reason for leaving his employment was his dissatisfaction with the wages and because he was not getting overtime pay, and that Green was "very well aware of the agreement of hire when he was rehired by this employer," benefits were denied. The findings and decision were subsequently affirmed (although modified as to another matter) by the appeals board. The district court, on judicial review, found that:

> Although the Claimant contends that Wengert Transportation, Inc., operated in violation of the federal law, the issue here was correctly assessed by the hearing officer in providing that the claimant fell within Administrative Code Section 370-4.25(13) as follows:
>
> The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.
>
> The Claimant's testimony fully supports that finding.

The district court found that the agency decision was supported by substantial evidence and therefore affirmed the final agency finding.

Green argues that this court should reverse the agency action, relying on Iowa Code section 17A.19(8), which authorizes a reviewing court to do so:

> . . . if substantial rights of the Petitioner have been prejudiced because the agency action is:
>
> a. In violation of constitutional or statutory provisions;
>
> b. In excess of the statutory authority of the agency;
>
> c. In violation of an agency rule;
>
> d. Made upon unlawful procedure;
>
> e. Affected by other error of law;
>
> f. In a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or
>
> g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

Green's argument is essentially that the employer's alleged violation of federal wage and hour laws constituted unlawful working conditions as a matter of law by reason of the supremacy clause. Green argues that the agency erred in not considering the alleged violations of federal law. We reject Green's argument that federal law should be dispositive in an unemployment compensation proceeding.

The Iowa Supreme Court rejected a similar argument in Central Foam Corporation v. Barrett, 266 N.W. 2d 33 (Iowa 1978). In Barrett, an unemployment compensation case, the Department of Job Services complained of the district court's reliance on the national labor relations act in a contested case involving striking workers. The court held:

> The termination occurred when the claimants were replaced for refusing to come back to work . . . The employer of course believes the replacement of the striking workers was fully justified. But we cannot, on this record, find the replacement was justified unless we do so on the same basis as did the trial court: by interpreting and applying the national labor relations act. To do so would, as the department contends, launch us into the labor field, a venture not demanded by chapter 96.
>
> We do not suggest the employer should be left without legal rights when its contract is violated. Neither do we condone contract violations. Of course an employer may under federal laws file complaint of the union's conduct to the national labor relations board. Our consideration is limited to chapter 96 benefits. [emphasis added]

Id. at 35. The same logic compels us to reach a similar conclusion here. We do not expect the parties to litigate, nor the agency to decide, complicated issues of federal wage and hour law violations. The agency determination should be based upon unemployment compensation law, and our consideration on review is limited to chapter 96 benefits. We find no error on the part of the agency or the district court in disregarding Green's arguments regarding the employer's alleged violation of federal wage and hour laws.

B. Change in contract. Green argues further that the employer's alleged increase in required work hours amounted to a "significant change in the contract

of hire" which, pursuant to I.A.C. 370-4.26(1), amounted to good cause attributable to the employer. This argument was raised for the first time in Green's appellate brief. Having not raised the change-of-contract issue before the agency or the district court, Green is precluded from raising the issue now. See Osborne v. Iowa Natural Resources Council, 336 N.W. 2d 745 (Iowa 1983)(on judicial review of a contested case the supreme court will not consider an issue not presented to the district court).

Because we find that the agency and the district court correctly applied the law regarding the voluntary quit issue, we affirm the agency finding that Green did not quit for good cause attributable to the employer.

III. "Other" v. "Better" Employment

Although Green is disqualified from receipt of benefits because of his voluntary quit, he may requalify if the department finds that he "left his . . . employment in good faith for the sole purpose of accepting better employment. . . ." Iowa Code §96.5(1)(a). The agency specifically addressed in its rulings the issue of "better" employment and found that "the record establishes that the claimant left his employment for other employment." The agency concluded, and the district court agreed, that Green did not meet the requalifying requirements of section 96.5(1)(a). We find that the evidence in the record supports the agency findings.

At best, the jobs were comparable. We note also that the new "better" job to which Green went was the same job which he had quit earlier in order to accept employment with Wengert. The agency and district court correctly found that Green did not meet the requalifying requirements of section 96.5(1)(a) and was therefore disqualified for unemployment compensation.

IV. Costs

On judicial review at the district court level, the agency requested that Green be assessed the costs of the action. In affirming the agency action, the district court accordingly assessed costs to Green.

Iowa Code section 96.15(2) states as follows:

> No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer thereof. * * *

We find that the district court erred in assessing costs against Green and therefore reverse that portion of the order.

AFFIRMED IN PART AND REVERSED IN PART.