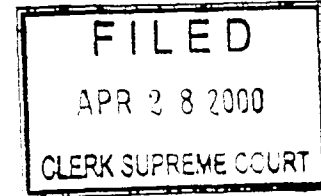


IN THE COURT OF APPEALS OF IOWA

No. 0-171 / 99-894
Filed April 28, 2000



CERTAIN-TEED CORPORATION,

Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD,

Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Jerrold W. Jordan,
Judge.

The petitioner appeals from the district court's ruling affirming the respondent's decisions that the petitioner's employees were entitled to unemployment compensation benefits. **AFFIRMED.**

Philip H. Dorff, Jr., of Hopkins & Huebner, P.C., Des Moines, for appellant.

Richard H. Ramsey, Des Moines, for appellee.

Heard by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

000942

HUTINK, J.

I. Background Facts and Proceedings.

Maynard Thompson and Paul Smith were both formerly employed by Certain-Teed Corporation. Thompson and Smith quit their jobs at Certain-Teed on April 12, 1998, following mandatory revisions to their work shift schedules.

Both filed claims for unemployment benefits, citing these changes and resulting hardships as reasons for quitting their employment at Certain-Teed. Although their claims were initially denied, both were awarded benefits by the Employment Appeal Board on appeal from the administrative law judge's decision denying benefits. Certain-Teed unsuccessfully sought to reverse the Employment Appeal's Board's decision on judicial review.

On appeal Certain-Teed argues the district court erroneously concluded these changes in work schedules were significant and substantial changes in both employees' contracts for hire, despite the fact both Thompson and Smith cited personal reasons for quitting. Certain-Teed also asserts the Employment Appeal Board failed to make any finding of fact that the voluntary terminations were related to the employment and therefore the agency's decision is not supported by substantial evidence.

II. Standard of Review.

Our review of unemployment benefit cases is governed by the Administrative Procedure Act, Iowa Code chapter 17A. *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 354 (Iowa 1998). Our review is on error, and the agency's decision is binding on us if it is supported by substantial evidence and not based upon incorrect conclusions of law. *Bridgestone/*

Firestone Inc. v. Employment Appeal Bd., 570 N.W.2d 85, 90 (Iowa 1997). 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, is unreasonable, arbitrary, or capricious, or is affected by other errors of law. *Dico, Inc.*, 576 N.W.2d at 354.

We will grant limited deference to the agency on issues of law, including statutory interpretation. *Norland v. Iowa Dep't of Job Serv.*, 412 N.W.2d 904, 908 (Iowa 1987). Notwithstanding the court's ultimate responsibility to decide issues of law, when a case calls for the exercise of judgment on a matter within the expertise of the agency, we generally leave such decisions to the informed judgment of the agency. *Dico, Inc.*, 576 N.W.2d at 354.

III. The Merits.

The determination of whether a quit is voluntary or involuntary is a legal issue. *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa App. 1992). According to the statutory scheme, an employee who voluntarily quits a job without "good cause" is generally disqualified from unemployment benefits. *Loeb v. Employment Appeal Bd.*, 530 N.W.2d 450, 451 (Iowa 1995). See Iowa Code § 96.5 (1997). Our task is to apply the facts to one of the definitions of "good cause" found in Iowa Code sections 96.5(1)(a)-(i). *Cobb v. Employment Appeal Bd.*, 508 N.W.2d 445, 447 (Iowa 1993). 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.

This section does not deny benefits where an individual has left work either (1) involuntarily or (2) voluntarily with good cause attributable to the individual's employer. *Bartelt v. Employment Appeal Bd.*, 494 N.W.2d 684, 685-86 (Iowa 1993). Chapter 871 of the Iowa Administrative Code section 24.26(1) provides:

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 disqualifying 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 of the job would not constitute a change of contract of hire.

In Thompson's case the Employment Appeal Board found:

Evidence in the record establishes that the claimant worked the same position on the same shift for eight years. The claimant testified that, basically, he never had a problem working this shift as it allowed him to continue his farming activities. The record clearly shows that the employer's adoption of a new schedule, i.e., 12-hour days, alternating days on and off, represented a substantial change for the claimant in that he was well used to working 8-hour days, weekdays only. Not only was this a substantial change in the claimant's shift, testimony revealed that this change also would have necessitated additional personal expense on his part as a result of the change.

Mr. Thompson's admission to having an option of bidding on another job on the same shift, and yet failing to do so, does not deter his argument. It is implied from the record that the job he failed to bid on was substantially different in nature in that he didn't feel he could qualify and successfully bid on it, anyway. Thus, the claimant's justification for failing to pursue his option on another job was reasonable under the circumstances.

In light of the fact that the shift change was drastically different from his old schedule, and the only option he had available involved a different type, the Board would conclude that employer's change represented a substantial change in claimant's contract of hire. As such, the claimant's quit must be considered as with good cause attributable to the employer.

In Smith's case the Employment Appeal Board found:

Mr. Smith testified that he had worked the same schedule for the last five years which was undisputed by the employer. Although the employer indicated that his pay would not be reduced, the claimant testified that he was being paid \$13.48/hr. for 40 hours which would have been reduced per hour and that he would be required to put in more hours in order to receive near the same pay.

Under his old schedule, the record shows he actually worked a 36-hour week and was paid for 40 hours. Under the new schedule, both parties agree that his hours would be 40 hours one week, 36 hours the next with mandatory overtime. Further, the days he worked were not constant as they were under the old schedule. Thus, the Board would conclude that these changes were substantial in nature. Accordingly, the claimant's quit is considered as with good cause attributable to the employer as there was a substantial change in his contract of hire.

Our review of the record before the Employment Appeal Board discloses abundant evidentiary support for its findings of fact. Application of those facts to the definition of good cause at issue here leads us to the same conclusions reached by the Employment Appeal Board and the district court. The four-hour extension of Thompson's workday is fairly characterized as a substantial change in his contract for hire rather than a minor change in his work routine. Similarly, the extension in the total number of hours worked for the same pay and uncertain work schedule attending Smith's shift changes support the conclusion there was a substantial change in his contract for hire.

We reject Certain-Teed's contention that Thompson's and Smith's claims should be denied because their stated reasons for quitting included personal hardships. Because personal consequences may be equally incident to either a substantial change of a contract for hire or minor changes of a worker's job routine, we think such considerations are collateral to the dispositive question.

To hold otherwise requires us to illogically conclude that a substantial change of a contract for hire and personal hardships are mutually exclusive. In other words, whether a shift change amounts to a substantial change of the contract for hire is a determination that can be made independent of any consideration of its negative personal consequences to an employee.

AFFIRMED.

000047