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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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MARGARET E. WILLS,	)	
Petitioner-Appellant,	)	
vs.	)	
EMPLOYMENT APPEAL BOARD and THE KEOKUK CONVALESCENT CENTER, INC.,	)	8-663 88-861
Respondents-Appellees.	)	

Appeal from the Iowa District Court for Lee County (No. CE 955(5)0887), Harlan W. Bainter, Judge.

Appellant challenges the denial of her unemployment benefits. **AFFIRMED.**

Susan Dolek, Legal Services Corporation of Iowa, for petitioner-appellant.

Blair H. Dewey and William C. Whitten of the Employment Appeal Board, for respondents-appellees.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

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HABHAB, J.

Claimant Margaret Wills challenges the denial of her unemployment benefits. We agree claimant was not entitled to the benefits sought and affirm the district court.

Claimant was employed by The Keokuk Convalescent Center, Inc. as a nurse's aide from November 1983 through March 30, 1987. Her job required her to lift patients and perform other hygienic tasks. In early 1987, claimant became pregnant and her employer requested claimant to get a doctor's release to continue working. The release she obtained provided claimant could continue work with a twenty-five-pound lifting restriction.

A witness for the employer testified, and the agency found, since mid-1986 the employer instituted a policy that employees with weight-lifting restrictions are precluded from employment. The policy was instituted because of past tension between employees when certain workers with such restrictions were given light-duty work with the same pay. The employer told claimant no work accommodating this lifting restriction was available.

The claims deputy for the Iowa Department of Job Service determined claimant was not "able and available for work" within the meaning of Iowa Code section 96.4(3) (1987) and denied her benefits. On appeal, the agency's hearing officer found the claimant's weight restriction did not limit her ability to work such that she was unable to

work as a general principle. He denied benefits after concluding claimant's termination should be considered a voluntary quit under Iowa Code section 96.5(1)(d) (1987), which states:

> 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:
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> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the division, provided the individual is otherwise eligible.

The Employment Appeal Board and the district court affirmed the denial of benefits on the same grounds, having found the hearing officer correctly applied the law to the facts in this case.

On appeal, claimant contends (1) she was fired by her employer and there is not substantial evidence to support a finding she voluntarily quit and (2) if her situation is to be interpreted a "voluntary quit" it was with good cause attributable to her employer.

Our review of agency action is governed by the Iowa Administrative Procedures Act, specifically Iowa Code

section 17A.19(8) (1989). We view the record as a whole to determine whether there is substantial evidence to support the agency's final action. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187, 190 (Iowa 1984). Fact findings made by the agency have the force of a jury verdict and will not be overturned if supported by substantial evidence. Heatherly v. Iowa Department of Job Service, 397 N.W.2d 670, 670 (Iowa 1987). We are not bound by the legal conclusions of the Board. Green v. Iowa Department of Job Service, 299 N.W.2d 651, 655 (Iowa 1980).

We agree with the Board's conclusion claimant's unemployment situation should be deemed a voluntary quit as defined in Iowa Code section 96.5(1)(d). The cases of Area Res. Care v. Iowa Dept. of Job Service, 323 N.W.2d 257 (Iowa 1982), and Butts v. Iowa Dept. of Job Service, 328 N.W.2d 515 (Iowa 1983) are instructive.

In Area Res. Care, a pregnant employee requested an unpaid leave of absence. Her duties of providing care for mentally retarded adults exposed her to disruptive behavior including kicking. The claimant produced a doctor's statement that she "should work in an environment where her abdomen is not subject to trauma." The employer refused her request. She then requested work where she would not be exposed to violence. Because no openings were available, her request was denied and the claimant quit. Id. The court held claimant quit due to risks to her

pregnancy which is a voluntary condition rather than a cause attributable to her employer, thereby making section 96.5(1)(d) applicable. Id. Having applied the section, the court found claimant would not be eligible for benefits during the period of her absence due to pregnancy, but would be eligible following the conclusion of her pregnancy if she met the additional requirements of the statute. Id. at 259.

In Butts, the pregnant claimant worked as a motel maid and her doctors advised her she could work until two to four weeks before delivery if she decreased lifting and bending activity. Butts, 328 N.W.2d at 516. The employer had no available work accommodating these restrictions, so claimant continued to work as a maid until May 14, 1980. She was granted a leave of absence, had her baby, and again offered her services on October 12, 1980, after she obtained a medical release from the doctor. The agency denied benefits for the May 14-October 12 period finding she did not meet the requirements under section 96.5(1)(d) entitling her to benefits during this time. Benefits were allowed from that time because the employer did not offer work.

On appeal, the claimant in Butts contended application of this section to deny her benefits for the five-month period conflicted with 26 U.S.C. section 3304(2)(12) (federal unemployment tax act), which states in relevant

part "no person shall be denied compensation . . . solely on the basis of pregnancy or termination of pregnancy." Id. at 517, (citing Brown v. Porcher, 502 F. Supp. 946, 957 (D.S.C. 1980)).

The court in Butts found no such conflict and affirmed the denial of benefits when concluding:

> We find no presumption in section 96.5(1)(d) that a pregnant woman is unable to work. The legislature has merely determined not to provide maternity leaves. Pregnancy is treated as an injury or illness. If work is interrupted for reasons of maternity, it is no longer treated as a voluntary quit. She is not disqualified from benefits. For example, under the statute a woman who works until the week before delivery (leaving on her doctor's advice), and returns four weeks later (with a doctor's approval) will then receive benefits if she is denied re-employment.

Butts, 328 N.W.2d at 517-18.

We find no factor upon which to distinguish this case from Butts. Both claimants left work due to medical advice and physical restrictions that prevented them from performing duties required in their jobs. The physical restrictions were not job-related as both were able to do the work prior to becoming pregnant. Neither claimant contends the employer made them leave solely because of pregnancy, but it was the restrictions on the ability to perform the job which led to the unemployment.

Jobs accommodating the restrictions were not available. In the present case, the agency hearing officer made a specific finding the employer's policy to no longer provide special light-duty work assignments to people with

weight-lifting restrictions had been applied equally to all employees regardless of the reason for the restriction. Therefore, a person with such a medically-documented restriction due to a non-work-related back injury would have had to leave employment as well.

In both situations the claimants are not entitled to benefits while on leave. We need not here address the question of whether she is entitled to benefits if the requirements of Iowa Code section 96.5(1)(d) (1989) are met.

The decision of the district court is affirmed.

AFFIRMED.