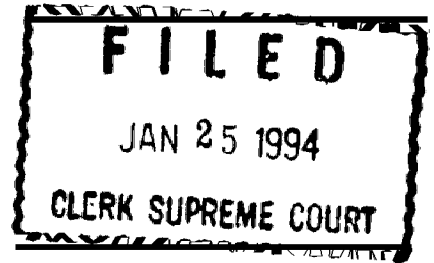


IN THE COURT OF APPEALS OF IOWA

No. 3-615 / 93-411



BOOMSMA'S INC.,

Appellant,

vs.

EMPLOYMENT APPEAL BOARD and
GAIL D. DAVIS,

Appellees.

Appeal from the Iowa District Court for Polk County,
Arthur E. Gamble, Judge.

The employer appeals a district court decision affirming the Employment Appeal Board's award of unemployment benefits to the employee. **AFFIRMED.**

Joan M. Denton and William Sidney Smith of Smith, Schneider, Stiles, Wimer, Hudson, Serangeli, Robinson, Mallaney, Shindler, Scalise & Sandre, Des Moines, for appellant.

William C. Whitten, Des Moines, for respondent-appellee.

Barry Bruner, Carroll, for intervenor-appellee.

Heard by Hayden, P.J., and Sackett, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

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KEEFE, S.J.

Gail D. Davis was employed as the plant manager for Boomsma's, Inc. in Alden, Iowa. On October 22, 1991, Davis experienced a sudden onset of depression and a panic and anxiety disorder which was related to stress from his job. He did not report for work on that day. The nature of his emotional or mental illness made him unable to communicate with his coworkers. On October 23, 1991, Davis's wife, Barb Davis, notified the employer that Davis was unable to return to work because of illness.

The vice president of Boomsma's, Jim Dean, visited the Davises at their home. He told Davis he would not need to use his vacation pay during his illness and that the company would take care of him. Boomsma's paid Davis his regular salary through November 8, 1991. At that time Dean informed Barb that Boomsma's would not be issuing any more checks to Davis. Davis then assumed his employment at Boomsma's had been terminated.

Sometime later, Davis returned to the plant to retrieve his personal belongings. Upon learning he had been at the plant, Boomsma's changed the locks. Davis's physician told him he should not return to the stress of his job at Boomsma's. On March 1, 1992, he applied for a position with Pella Windows & Doors. Boomsma's learned Davis was seeking a new job when Pella called asking for a reference. Boomsma's then took action to fill Davis's position.

Davis filed a claim for unemployment benefits on December 29, 1991. A Job Service representative determined Davis was entitled to benefits. Boomsma's appealed, and a hearing was held before an administrative law judge (ALJ). The ALJ reversed and found Davis was not entitled to benefits because he voluntarily quit his job.

Davis appealed to the Employment Appeal Board. The board reversed the ALJ and reinstated Davis's benefits. The board found Davis never intended to quit his employment. However, Boomsma's did quit paying him. The board concluded Davis was discharged by the employer when his pay ceased.

Boomsma's then sought judicial review. The district court affirmed the board, finding its decision was supported by substantial evidence. Boomsma's now appeals.

Boomsma's contends there is insufficient evidence in the record to show Davis was discharged. It states that it never informed Davis he was discharged or terminated. The employer claims the evidence shows Davis voluntarily quit his employment. It points out that Davis admitted he never inquired about returning to his job.

Our scope of review in cases arising out of the Iowa Administrative Procedure Act is limited under Iowa Code section 17A.20 to the correction of errors of law. Pepsi Cola Bottling Co. v. Employment Appeal Bd., 465 N.W.2d 674, 675 (Iowa App. 1990). We, like the district court, are bound by the agency's findings of fact if those findings

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are supported by substantial evidence. Sharp v. Employment Appeal Bd., 479 N.W.2d 280, 282 (Iowa 1991). We are not, however, bound by the agency's legal conclusions, but may correct misapplications of law. Id.

In determining whether there is substantial evidence to support the agency finding, the question is not whether there is substantial evidence to support a different finding, but whether there is substantial evidence to support the finding actually made by the agency. Freeland v. Employment Appeal Bd., 492 N.W.2d 193, 197 (Iowa 1992). Where the evidence is in conflict or where reasonable minds might disagree about the conclusions to be drawn from the evidence, the court is bound to accept the board's findings. Id. We take all record evidence into account in our review and grant appropriate deference to the board's expertise. Id.

As noted by the district court, under the evidence in this case a reasonable fact finder could have found that Davis voluntarily quit his employment or could have found that he was discharged. Where two inconsistent conclusions may be drawn from the record, such a possibility does not prevent the agency's finding from being supported by substantial evidence. Ray v. Iowa Dep't of Job Serv., 398 N.W.2d 191, 194 (Iowa App. 1986).

The evidence here shows Davis did not quit his job. A representative of Boomsma's told Davis he would be taken care of, and the company paid Davis his regular salary

until November 8, 1991, when it decided to issue no more checks to him. Boomsma's never informed Davis he could return to his job, and after he visited the plant it changed the locks, further reinforcing his belief he had been discharged. We determine there is substantial evidence in the record to support the board's decision.

We affirm the decision of the district court and the Employment Appeal Board. Costs of this appeal are assessed to Boomsma's.

AFFIRMED.