

FILED

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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

DEERE & COMPANY,

)

Petitioner-Appellee,

)

vs.

)

Filed September 20, 1979

IOWA DEPARTMENT OF JOB SERVICE,

)

Respondent-

)

and

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171

LARRY R. BETTS,

)

2-62655

Respondent-Appellant.

)

Appeal from Polk District Court - Theodore H. Miller, Judge.

Respondent-claimant appeals district court's judgment reversing an agency determination that he was entitled to unemployment compensation benefits asserting that there was substantial evidence in the record to support the agency's finding in his favor and that trial court, therefore, erred in reversing the agency's determination. Reversed with order reinstating agency's decision.

Linda S. Pettit of Des Moines, for appellant.

Roger Ferris and Gary D. Stump of Des Moines, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

JOHNSON, J.

Respondent-claimant, Larry Betts, appeals district court's judgment reversing an agency determination by respondent Iowa Department of Job Services¹ that he was entitled to unemployment compensation benefits under section 96.5(2)(a), The Code 1977. He asserts that there was substantial evidence in the record to support the agency's finding in his favor and that district court erred in reversing the agency's determination. We reverse district court's judgment and order reinstatement of the agency's decision.

I. Respondent Betts was absent from his job as a drill press operator with petitioner-employer, Deere & Company, the entire week of August 29, 1977. On August 30th, he telephoned the Deere personnel office and informed its office employees that he was having problems with his car and had no transportation to work.² On Monday, September 5, 1977, Betts received a letter from Deere & Company which read as follows:

This letter is to notify you that you have been absent for three (3) consecutive working days. The current Labor Agreement provides that an employee shall lose his seniority and his employment will be broken if he remains away from work for three (3) consecutive days without a satisfactory reason.

Effective 1 September 1977, your employment relationship at the John Deere Des Moines Works has been suspended and unless the Industrial Relations Department immediately receives a satisfactory reason for your absence, you will be considered terminated as of 1 September 1977.

Having no additional explanation to offer for his absence from work, respondent Betts did not report again for work but came to the Deere office on September 9, 1977, to pick up his last paycheck. He also returned his tools and, upon request, turned in his identification card and prescription drug card.

Following Betts' application for benefits, a claims deputy of respondent-agency ruled that Betts was disqualified for benefits under section 96.5(1), The Code 1977, (disqualification for benefits due to a voluntary quit without good cause attributable to employer) for the reason that he had "failed to report for work or advise your employer

¹ Hereinafter referred to as "the agency."

² Respondent and his witness testified that respondent called the personnel office on August 30, 31, September 1 and 2. A witness for petitioner testified that respondent called on August 31 and September 1 and 2.

of your reason for your absence for three consecutive days."³ Betts appealed the deputy's decision and a hearing was held before an agency hearing officer. At the hearing, Betts testified that he did not know about the three-day absence rule in the Labor Agreement; that he reported the true reason he had been unable to report to work; that when he received the letter from Deere & Company he had no way to get in to talk to the company, and that he had given them the only reason he had for his absence; that he, therefore, interpreted the letter to say he was terminated (fired) as of September 1st. Additionally, a witness for Betts testified that he was with Betts, attempting to repair Betts' car, on the 30th and 31st of August, when Betts reported to the personnel office by phone.

Based on the above evidence, the hearing officer found that Betts did not voluntarily quit his employment without good cause attributable to his employer but instead found Betts was discharged because of misconduct and that section 96.5(2) was applicable. The decision of the claims deputy therefore was modified and forfeiture of five weeks' benefits was ordered pursuant to section 96.5(2)(a), The Code 1977.⁴ The agency's appeal board affirmed the hearing officer's ruling and denied petitioner's untimely application for rehearing. Petitioner then sought judicial review by the district court which found that the claims deputy incorrectly applied Rule 370-4.25(4), because Betts had notified petitioner of his absence, but found there was not substantial evidence to support the agency's finding that section 96.5(2)(a) was applicable. Noting that Betts' absence was due to a lack of transportation, a personal reason not directly connected to the employer, as set forth in Rule 370-4.25(1), I.A.C., the court ruled that Betts voluntarily quit without good cause attributable to his employer and disqualified him for benefits under section 96.5(1), The Code 1977.

II. Pursuant to section 17A.20, The Code 1977, our review in this case is limited to a determination of whether the district court made errors of law when it exercised its powers of review of the agency action under section 17A.19. Jackson County Public Hospital v. PERB, 280 N.W.2d 426, 429 (Iowa 1979); Iowa Public Service Co. v. Iowa

³ Rule 370-4.25(4), I.A.C., provides that a voluntary quit shall be presumed to be without good cause attributable to the employer if "[t]he claimant was absent for three days without giving notice to employer in violation of company rule."

⁴ Section 96.5(2)(a) provides for forfeiture of one to nine weeks' benefits if discharge is for misconduct.

State Commerce Comm'n, 263 N.W.2d 766, 768-69 (Iowa 1978). Section 17A.19 limits the district court's review to a determination of whether the agency committed any errors of law specified in section 17A.19(8).⁵ Thus, to determine whether district court properly exercised its power of judicial review "this court applies the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. If the conclusions are the same, affirmance is in order. If they are not, reversal may be required." Jackson County, 280 N.W.2d at 429-30.

Section 17A.19(8)(f) provides that the district court shall reverse or modify the agency action if such action is "unsupported by substantial evidence in the record made before the agency when the record is viewed as a whole." "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." City of Davenport v. PERB, 264 N.W.2d 307, 311 (Iowa 1978), citing Grant v. Fritz, 201 N.W.2d 188, 197 (Iowa 1972). The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Reisner v. Board of Trustees of Fire Retirement System, 203 N.W.2d 812, 814 (Iowa 1973). Further, findings of fact made by an agency within its statutory authority are given the same deference by this court as a jury verdict. Wallis v. Iowa Employment Security Comm'n, 219 N.W.2d 539, 540 (Iowa 1974).

III. Applying the above principles, we must determine whether district court erred in ruling that there was no evidence of misconduct and that the agency's determination was based on an inapplicable statutory provision. Under his "FINDINGS OF FACT," the hearing officer stated that: "Finally, on September 1, 1977, the claimant [respondent Betts] was advised by employer [petitioner-Deere & Company] that his

⁵ Section 17A.19(8), The Code 1977, requires the district court to reverse, modify or grant other appropriate relief if a petitioner's substantial rights 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.

services were terminated because he had been absent from work excessively."⁶ Petitioner argues that there is no evidence to support this finding because petitioner at no time has contended Betts was absent excessively. Rather, petitioner asserts, the evidence shows petitioner at all times has asserted Betts quit voluntarily. In further support of its position, petitioner relies on its collective bargaining agreement with the union which provides that an employee is deemed to have voluntarily quit if he is absent for three consecutive days without satisfactory reason. Petitioner's letter of September 2 to Betts thus was simply the petitioner's method of recording Betts' formal termination after he had been deemed to have quit.

While there is no evidence that petitioner literally communicated to Betts that he was terminated because he had been absent from work excessively, our inquiry cannot end there. We must determine whether the evidence is sufficient to support an inference that Betts' employment was terminated for those reasons and that such was sufficient to warrant a conclusion that his behavior constitutes misconduct. The final paragraph of the hearing officers's "REASONING AND CONCLUSIONS OF LAW" states:

The hearing officer holds that the claimant, Larry R. Betts, did not voluntarily leave his job with John Deere Des Moines Works but was terminated by that employer because he was absent from work for unsatisfactory reasons. The claimant is obligated to furnish his own transportation to and from work and when the claimant fails to report for work because his vehicle was disabled, he has demonstrated a willful and wanton disregard for the employer's interest.

Misconduct, for which an individual shall forfeit one to nine weeks of benefits, "is defined as a deliberate act or omission by a worker which constitutes a breach of duties and obligations arising out of such worker's contract of employment." Rule 370-4.32(1)(a), I.A.C. Excessive absenteeism is considered an intentional disregard of the duty owed by the employee to the employer and constitutes misconduct. Rule 370-4.32(7), I.A.C. However, "excessive" is not defined by the rules. Whether absence from work for three days without satisfactory reason is excessive, thereby constituting misconduct, thus is a question of fact.

On the other hand, a person is disqualified for all benefits if the agency finds "he or she has left his or her work voluntarily without good cause attributable to his or her

⁶ App. p. 31.

employer" Section 96.5(l), The Code 1977. Rule 370-4.25(96), I.A.C., states that a voluntary quit without good cause means "discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated."⁷ A voluntary quit is presumed to be without good cause attributable to the employer if it is due to the employee's lack of transportation to the work site unless the employer has agreed to furnish transportation for the employee. Rule 370-4.25(l), I.A.C.

Petitioner's assertion that Betts' termination was a voluntary quit, as defined by the collective bargaining agreement reached with the union, and as interpreted by the company itself, cannot be controlling. Whether an employee's absence from the work site constitutes a voluntary quit, like misconduct, is a question of fact which must be answered by the agency in its determination of eligibility for benefits.

Our review of the record and district court's ruling leads us to conclude that district court erred in finding that the only conclusion to be reached by the evidence in this case is that Betts voluntarily quit. We believe the district court erroneously concluded that a lack of transportation was presumptive of a voluntary quit. Under our interpretation of Rule 370-4.25(l), lack of transportation is presumptive only of "without good cause attributable to the employer." This presumption becomes applicable only after a finding has been made that the employee voluntarily left his or her employment. According the respect due the expertise of the administrative tribunal, we find there was substantial evidence from which the agency could conclude that Betts did not voluntarily quit his employment. The agency then was authorized to determine eligibility or disqualification for benefits under other statutory sections. The district court's judgment should be reversed and the agency's decision reinstated.

Reversed with order reinstating agency's decision.

⁷ Rule 370-4.1(l)(3)(b), I.A.C., defines a quit as "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces."