FILED
DEC 27 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HOWARD D. SHEARER,

Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF JOB SERVICE and INLAND MILLS COMPANY,

Respondents-Appellees.

Filed December 27, 1983

3-317
83-237

Appeal from Polk District Court - George W. Bergeson, Judge.

Petitioner-employee appeals from the district court decision on judicial review affirming respondent-agency's denial of unemployment compensation benefits. REVERSED AND REMANDED.

Diane L. Dornburg, Des Moines, Iowa, for petitioner-appellant.

Blair H. Dewey, Walter F. Maley, and Joseph R. Bervid, Iowa Department of Job Service, for respondent-appellee agency.

Marilyn S. Scheer of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, Iowa, for respondent-appellee employer.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

Petitioner-employee, Howard D. Shearer, appeals from the district court decision on judicial review affirming respondent-agency's denial of unemployment compensation benefits. Shearer asserts that the agency decision that he failed to accept suitable work was in violation of agency rules and that the agency action was unreasonable, arbitrary, and capricious, and an abuse of discretion. We reverse and remand.

Shearer was employed by Inland Mills Company (Inland) from November 9, 1979, to February 22, 1980. He was laid off by Inland on February 23, 1980. Approximately five months following his lay-off, Mr. Shearer moved from his home in Des Moines to Ankeny and filed a forwarding address card with the U.S. Postal Service. He did not notify the employer. The employer sent Shearer a certified letter dated August 22, 1980, a Friday, informing him that he could return to work at 7:00 a.m. on August 25, 1980, the next Monday. The letter was sent to Shearer's prior address in Des Moines and did not reach him until August 29, 1980. Shearer testified that he assumed at that time that it was too late to respond and did not inquire regarding the availability of work until approximately two weeks later, at which time the job was no longer available. Shearer filed an initial claim for unemployment benefits in November, 1980.

A hearing was held before an agency hearing officer by a telephone conference call on December 30, 1980. The record consists of this hearing, ten pages in length when transcribed, and the forms and papers filed with the agency by Mr. Shearer. The agency hearing officer disqualified Shearer on the ground that he had failed, without good cause, to accept suitable work. This decision was affirmed by the agency appeal board. The agency did not mention in its decision an agency rule that a worker cannot be disqualified for refusing work during a period in which the worker does not have a current valid job insurance claim for benefits. Shearer, in his brief before the agency, argued this rule required

reversal of the hearing officer's decision. The district court affirmed the agency on judicial review. The court held that the rule was inapplicable because "the effect of ruling otherwise would allow an employee who has been laid off to refuse to return to work upon recall without losing his right to unemployment benefits by merely failing to file for such benefits until after he has received and rejected his employer's recall notice."

I. Scope of Review. 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 in law. Foods, Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 165 (Iowa 1982). The review function of the district court under section 17A.19 is to correct errors of law which are specified in section 17A.19(8). When we review decisions of the district court which were rendered in its capacity as an appellate body under section 17A.19, the issue for our determination is whether the district court correctly applied the law. Budding v. Iowa Department of Job Service, 337 N.W.2d 219, 221 (Iowa Ct. App. 1983). In order to make that determination, we apply 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. Jackson County Public Hospital v. Public Employment Relations Board, 280 N.W.2d 426, 429-30 (Iowa 1979).

Where the facts are disputed, we will adopt the factual determinations made by the agency as long as they are supported by substantial evidence in the whole record. Temple v. Vermeer Mfg. Co., 285 N.W.2d 157, 160 (Iowa 1979). Where the facts and inferences fairly to be drawn therefrom are undisputed, however, the issue becomes one of law. Green v. Iowa Department of Job Service, 299 N.W.2d 651, 655 (Iowa 1980). We are limited to the record before the hearing officer in making this determination. Id.

II. Failure to Accept Work. The dispositive question in this appeal is whether, under its rules, respondent Iowa Department of Job Service erred in

finding Shearer failed, without good cause, to accept work. Shearer does not allege that the agency's finding of fact was unsupported by substantial evidence in the record. See Iowa Code § 17A.19(8)(f) (1983). He challenges the agency ruling on the basis that the decision was in violation of an agency rule (see Iowa Code § 17A.19(8)(c) (1983)) and that the decision was unreasonable, arbitrary, or capricious (see Iowa Code § 17A.19(8)(g) (1983)). Neither the agency nor Inland, in support of the agency decision, challenge the validity of the agency rule which Shearer depends on for reversal of the agency decision. See Iowa Code § 17A.19(8)(a), (b), (d) and (e) (1983).

The burden of proof is upon a claimant seeking unemployment compensation. Brumley v. Iowa Department of Job Service, 292 N.W.2d 126, 128 (Iowa 1980). The statutory provisions for establishing "failure to accept work" as a ground for disqualification of benefits are contained in Iowa Code section 96.5(3) (1981). The Job Service administrative rules relating to "failure to accept work" are contained in 370 Iowa Administrative Code section 4.24. 370 Iowa Administrative Code section 4.24(8) provides:

> Unemployed and registered for work. A worker cannot be disqualified for refusing a job during a period in which such worker does not have a current valid job insurance claim for benefits. In general, an offer of employment may be made to an individual at any time; however, before the refusal penalty of disqualification is imposed, it must be shown that at the time of the job offer the claimant was unemployed and had an unexpired valid job insurance claim for benefits.

Shearer contends that the agency decision was erroneous because the agency failed to consider this rule. We agree.

Shearer asserts that the agency's rule requires that no disqualification be imposed unless the claimant has a claim for benefits on file with the agency at the time of the refusal of work. The agency and Inland both deny that the agency rule requires a claim for benefits to be on file. Both assert that a claimant, under this interpretation of the rule, could refuse to accept suitable work with impunity

simply by delaying the filing of a claim for benefits. They do not, however, offer any alternate interpretation of the rule. Nor do we believe that they could do so.

The rule is certainly not a model of clarity. In particular, the phrase "current [or unexpired] valid job insurance claim for benefits" is ambiguous. This phrase does not make clear whether or not an application must be on file in order for this rule to apply. We must look to other provisions of the Iowa Administrative Code to determine the meaning of that phrase. Claim is defined in the code as "[a] request for benefit payment; also used to mean any notice filed by an individual to establish insured status or a notice filed by an individual to inform the administrative agency of the individual's unemployment." 370 I.A.C. § 4.1(25). "Valid job insurance claim" is defined by the code as "[a] new claim on which a determination has been made that the claimant has met the wage or employment requirements (and, under some laws, other eligibility conditions) to establish a benefit year." 370 I.A.C. § 4.1(25)(c)(4). These definitions specifically contain a requirement for filing and a requirement for a determination based upon an agency evaluation of an application. It is clear that under 370 Iowa Administrative Code section 4.24(8), a claimant will not be disqualified from benefits for not accepting work unless an application for benefits is made prior to the refusal to accept work. This interpretation comports with our belief that the Employment Security Law should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment. Overton v. Iowa Department of Job Service, 338 N.W.2d 130, 134 (Iowa 1983); Brumley v. Iowa Department of Job Services, 292 N.W.2d at 129.

The agency, in its decision, found that Shearer failed to act with due diligence in accepting the offer of employment he received on August 29, 1980. The record also shows that this claim for benefits was not filed until November 7, 1980. We hold that Job Service did not comply with its own rules in disqualifying Shearer from unemployment compensation benefits for failure to accept work.

Iowa Code § 17A.19(8)(c). Accordingly, the action of Job Service in disqualifying Shearer from benefits under this record on the basis of "failure to accept work" was unreasonable and arbitrary. Iowa Code § 17A.19(8)(g); Brumley v. Iowa Department of Job Service, 292 N.W.2d at 129.

Shearer also asserts in this appeal that the agency violated its rules in determining that Inland made a bona fide offer of work and in disqualifying him without finding that he had made a definite refusal of employment. We find it unnecessary to reach those issues because of our decision that, under the agency's "failure to accept work" rules, the "failure to accept work" disqualification does not apply to Shearer. We note, for purposes of future agency action, that under Iowa Code section 17A.16(1) an agency is required to separately state its findings of fact and conclusions of law. See Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 9-10 (Iowa 1982).

We reverse and remand to the agency for action consistent with this opinion.

REVERSED AND REMANDED.

Hayden, J., concurs with this opinion; Donielson, P.J., specially concurs.

DONIELSON, J. (specially concurring)

I concur in the result and rationale of the majority opinion. I write separately to express my views about 370 I.A.C. § 4.24(8).

As the majority states, it is quite clear that, under that rule, Shearer cannot be disqualified from receiving benefits since he did not have a claim for benefits on file at the time he allegedly refused work. This holding cannot be disputed or avoided since it is required by the plain language of the rule which the agency is obliged to follow. I do share, however, the concern of the employer with respect to this rule. A claimant for unemployment benefits would appear to be able to refuse to accept work without fear of losing his eligibility for benefits by the simple expedient of not filing his claim for benefits until after he had refused the work. This would certainly provide a disincentive for finding employment as soon as possible; a refusal to work would not prejudice the future possibility of claiming and receiving unemployment benefits. I am at a loss to see the purpose of such a rule as 370 I.A.C. § 4.24(8) and unfortunately neither the briefs nor the oral argument present any rational reason for a rule that is facially nonsensical and self-defeating of the noble purpose of unemployment compensation. Under the controlling rules, however, the result reached by the majority cannot be avoided. I therefore concur, albeit with personal reluctance.