

IN THE COURT OF APPEALS OF IOWA

No. 8-238 / 07-1078
Filed July 30, 2008

RICHARD L. WITKOWSKI,
Petitioner-Appellant,

vs.

**EMPLOYMENT APPEAL BOARD,
IOWA WORKFORCE DEVELOPMENT,
DIVISION OF JOB SERVICE,**
Respondents-Appellees,

L & L BUILDERS, CO.,
Employer.

Appeal from the Iowa District Court for Woodbury County, John D.
Ackerman, Judge.

Petitioner appeals the district court's affirmance of the decision of the
Employment Appeal Board denying his request for retroactive benefits.

AFFIRMED.

Paul W. Deck of Deck & Deck, L.L.P., Sioux City, for appellant.

Richard Autry, Des Moines, for appellees.

Heard by Vogel, P.J., and Zimmer, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

NELSON, S.J.**I. Background Facts & Proceedings**

Richard Witkowski filed a claim for unemployment benefits on August 7, 2005. On August 13 he began calling Iowa Workforce Development (IWD) with a continued claim each week to show he was actively seeking employment. See Iowa Code § 96.4(3) (2005); Iowa Admin. Code r. 871-24.2(1)(g) (2003). IWD initially found Witkowski was eligible to receive benefits, and the employer appealed. After an administrative hearing, on October 3, an administrative law judge (ALJ) disqualified Witkowski from receiving unemployment benefits.

Witkowski appealed the ALJ decision to the Employment Appeal Board (Board). On October 15, he stopped filing weekly claims for unemployment benefits. He continued to look for a job, however, and kept track of his search for employment.

Witkowski's appeal to the Board was denied in November 2005, and he filed a petition for judicial review. In the meantime, in March 2006, he obtained employment. On April 19, 2006, the district court reversed the decision of the Board and found Witkowski was entitled to unemployment benefits.

Witkowski then filed a claim for retroactive benefits from the period of October 15, 2005, until March 4, 2006. IWD denied the claim based on rule 871-24.2(1)(g), which provides claimants must timely call in on a weekly basis, "unless reasonable cause can be shown for the delay." After an administrative hearing, an ALJ also found Witkowski had not shown reasonable cause for the delay. The ALJ's decision was affirmed by the Board.

Witkowski filed a petition for judicial review of the decision of the Board.

The district court affirmed the agency decision, finding:

In this case, Witkowski was on notice of the need to make weekly reports and was capable of reading the agency rules dealing with such reporting requirements. The decision to deny retroactive benefits was not irrational, illogical, or wholly unjustifiable. Clearly, there was no “reasonable cause” for the delay in filing the work search information pursuant to the provisions of rule 871-24.2(1)(g).

The court denied Witkowski’s post-trial motion filed pursuant to Iowa Rule of Civil Procedure 1.904(2). Witkowski now appeals.

II. Standard of Review

Our review of agency action is governed by Iowa Code section 17A.19(10). We review the district court decision to determine if we would reach the same result under the Iowa Administrative Procedure Act. *Gaborit v. Employment Appeal Bd.*, 743 N.W.2d 554, 556 (Iowa Ct. App. 2007). If the agency’s decision is incorrect under the Act, and a party’s substantial rights have been prejudiced, the agency’s decision may be reversed or modified. *Insituform Technologies, Inc. v. Employment Appeal Bd.*, 728 N.W.2d 781, 787 (Iowa 2007).

III. Merits

A. Section 96.4(3) provides, “[a]n unemployed individual shall be eligible to receive benefits with respect to any week only if . . . [t]he individual is able to work, is available for work, and is earnestly and actively seeking work.” An unemployed person must show an ability to work to be able to receive benefits. *Sierra v. Employment Appeal Bd.*, 508 N.W.2d 719, 722 (Iowa 1993).

The burden of proof is on the claimant seeking unemployment benefits. *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979).

IWD has the power and authority to adopt rules to assist in the administration of the Iowa Employment Security Law. Iowa Code § 96.11(1). “Rules promulgated by an agency represent the agency’s interpretation of the Iowa Code provisions the legislature gave it to administer.” *Office of Consumer Advocate v. Iowa Utils. Bd.*, 744 N.W.2d 640, 643 (Iowa 2008). When the legislature has given an agency authority to adopt rules interpreting a code provision, the interpretation of the statute has been vested in the agency’s discretion. *Thoms v. Iowa Pub. Employees’ Ret. Sys.*, 715 N.W.2d 7, 11 (Iowa 2006). In this situation, we will reverse only if the agency’s interpretation is irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(I).

IWD has adopted a rule that requires a claimant to call in weekly, “unless otherwise directed by an authorized representative of the department,” to confirm that the person remained unemployed and was searching for work. Iowa Admin. Code r. 871-24.2(1)(e). The rules also provide:

No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

Iowa Admin. Code r. 871-24.2(1)(g).

Witkowski testified that he received materials that stated he should continue to file weekly claims during the appeal process. He asserts that once

he filed a petition for judicial review his administrative appeal was no longer pending, and he was no longer required to file weekly claims for benefits.¹ The administrative rules provide that a claimant shall report weekly “unless otherwise directed by an authorized representative of the department.” Iowa Admin. Code r. 871-24.2(1)(e). Witkowski was never directed to stop filing weekly claims. There is no support in the rules for his assertion that he was required to file weekly claims only while the case was pending before IWD or the Board. We conclude the agency’s interpretation of its rules is not irrational, illogical, or wholly unjustifiable.

B. Witkowski also claims there is not substantial evidence in the record to support the agency’s finding that he did not have “reasonable cause” for failing to file weekly claims during the period of October 15, 2005, to March 4, 2006. A factual matter clearly vested in the discretion of the agency will be reversed only if it is not supported by substantial evidence in the record as a whole. Iowa Code § 17A.19(10)(f). Evidence is considered substantial when it “would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue” Iowa Code § 17A.19(10)(f)(1). We consider all of the evidence, not just that supporting the agency’s decision. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

As noted above, rule 871-24.2(1)(g) provides that weekly claims must be timely filed, “unless reasonable cause can be shown for the delay.” A similar situation was presented in *Comiskey v. Iowa Department of Employment*

¹ We note, however, that Witkowski quit filing weekly claims on October 15, 2005, before the EAB had ruled on his appeal. He did not file a petition for judicial review until December 8, 2005.

Services, 425 N.W.2d 663, 664 (Iowa Ct. App. 1988), where a claimant stated that since she “had received notification she was not entitled to benefits, she felt there was no need to file weekly claims reports.” We determined there was substantial evidence in the record to support the agency’s determination that claimant had presented “no valid reason for her failure to comply with the statutory rules.” *Comiskey*, 425 N.W.2d at 665. We noted the claimant “possesses the knowledge to read the rules in pursuing her claim.” *Id.* We concluded the claimant was not entitled to unemployment benefits. *Id.*

Witkowski testified that after the ALJ denied his claim for unemployment benefits, he felt he no longer needed to file weekly claims. He did not look more closely at the rules, or question anyone at IWD about whether he needed to file weekly claims during the appeal process. Furthermore, ignorance of the law is no excuse. *Clark v. Iowa Dep’t of Revenue*, 644 N.W.2d 310, 319 (Iowa 2002). Individuals are presumed to know the law. *Millright v. Romer*, 322 N.W.2d 30, 33 (Iowa 1982). Witkowski’s ignorance of the agency’s rules does not constitute “reasonable cause” for his failure to timely file weekly claims.

We determine that in the present case there is substantial evidence in the record to support the Board’s finding that Witkowski did not show “reasonable cause” for failing to timely file weekly claims.

We affirm the decisions of the district court and the Board.

AFFIRMED.