IN THE COURT OF APPEALS OF IOWA

No. 1-586 / 11-0121
Filed November 9, 2011

TITAN TIRE CORPORATION,
Plaintiff-Appellant,

vs.

LABOR COMMISSIONER, DAVE NEIL,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

A corporation appeals from a district court ruling on judicial review from agency action, contending the agency acted irrationally in refusing to excuse a late filing. **AFFIRMED.**

Brenton D. Soderstrum of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines, for appellant.

Richard Autry of Iowa Employment Appeal Board, and Gail A. Sheridan-Lucht of Division of Labor, Des Moines, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

VAITHESWARAN, J.

We must decide whether an agency acted irrationally in refusing to excuse a late filing.

I. Background Facts and Proceedings

The Iowa Labor Commissioner issued Titan Tire Corporation two citations for violations of the Iowa Occupational Safety and Health Act. *See* Iowa Code ch. 88 (2009). Titan Tire timely contested one of the citations. The company later attempted to challenge the second citation by filing a notice of contest after the statutorily prescribed deadline.[1] The commissioner moved to dismiss the second notice of contest. The Iowa Employment Appeal Board, which is the agency charged with considering this type of challenge,[2] granted the commissioner's motion.

On judicial review, the district court affirmed the board's decision, and Titan Tire sought further judicial review.

II. Analysis

Titan Tire concedes that it failed to meet the statutory deadline for contesting the second citation. The company also concedes that the statute does not allow for avoidance of the deadline. It nonetheless argues that the

---

[1] The pertinent statute provides:

> If, within fifteen working days from the receipt of the notice issued by the commissioner, the employer fails to notify the commissioner that the employer intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employees or authorized employee representative under subsection 3 of this section within the time specified, the citation and the assessment, as proposed, shall be deemed a final order of the appeal board and not subject to review by any court or agency.

Iowa Code § 88.8(1).

[2] *See Id.* 88.8(3)(a).

board should have excused the late filing under the authority of a civil procedure rule that authorizes the setting aside of default judgments for good cause.

As will become clear, the board did in fact apply that rule. Accordingly, we need not decide the broad question of whether the rule should have been grafted onto Iowa Code section 88.8(1) as a matter of law. We need only decide the narrower question of whether the Employment Appeal Board properly applied the rule to Titan Tire's concededly late filing.[3]

Our standard of review is set forth in Iowa Code section 17A.19(10)(m). That provision authorizes relief where agency action is "[b]ased upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency." *Id.* § 17A.19(10)(m). The employment appeal board is clearly vested by a provision of law with authority to apply law to fact. *See id.* § 88.8(3)(b) (stating board shall act as an adjudicatory body); *see also City of Des Moines v. Emp't Appeal Bd.*, 722 N.W.2d 183, 193–94 (Iowa 2006) (applying "irrational, illogical, or wholly unjustifiable" standard of review to employment appeal board's interpretation of chapter 88); *Purethane, Inc. v. Iowa State Bd. of Tax Rev*iew, 498 N.W.2d 708, 711 (Iowa 1993) (prior to 1998 amendment of judicial review standards, applying abuse of discretion standard to agency's good cause ruling).[4]

Iowa Rule of Civil Procedure 1.977 provides:

---

[3] At oral arguments, counsel for the Employment Appeal Board argued that the board did not apply that rule. For reasons that will be articulated in the balance of the opinion, we disagree.

[4] We recognize that the board is not clearly vested with authority to interpret the civil procedure rule rather than apply it. *See City of Des Moines*, 722 N.W.2d at 191 (noting legislature did not vest agency with authority to interpret provision of Iowa Administrative Procedure Act).

> On motion and for good cause shown . . . the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.

In at least two opinions, the Iowa Supreme Court invoked this rule in deciding whether a party established good cause for a late filing before an agency. *See Marovec v. PMX Indus.*, 693 N.W.2d 779, 785 (Iowa 2005); *Purethane*, 498 N.W.2d at 711.

In *Marovec*, the court was asked to decide whether the workers' compensation commissioner abused its discretion in dismissing an intra-agency appeal for failure to file an appeal brief. *Marovec*, 693 N.W.2d at 780. The court found no abuse of discretion. *Id.* at 785. The court stated, "Imposing a sanction permitted by agency rule is not clearly irrational or unreasonable when, as here, the reason for the sanction is obvious: Marovec—*without good cause*—failed to file an appeal brief in a timely manner." *Id.* The court reasoned that it was required to give deference to the commissioner's decision. *Id.*

In *Purethane*, the court was faced with deciding whether an agency abused its discretion in dismissing an untimely tax protest. *Purethane*, 498 N.W.2d at 707. After noting that the agency had wide discretion in applying the good cause standard set forth in rule 1.977,[5] the court concluded the agency did not abuse that discretion. *Id.* at 711. The court stated, "The failure of Purethane's attorney to correctly identify the appeal period for the protest of a sales and use tax assessment is not a sound reason that rises to good cause shown." *Id.*

[5] Formerly Iowa Rule of Civil Procedure 236.

In this case, the board began its good cause analysis by referring to a definition of good cause promulgated by the labor commissioner. That definition is as follows:

> "Good Cause" cannot be defined in precise language because what is good cause in one circumstance may not be good cause in a different circumstance. It may be generally defined as that reasonable excuse given, under the circumstances of the case, to excuse an action which was not taken when it should have been taken. As an example, good cause for not appearing at a scheduled hearing would be if the individual had not received the notice of hearing in time to participate. The individual alleging good cause has the burden to establish that good cause did excuse the failure to take the needed action.

Iowa Admin. Code r. 486-2.2. The board then cited *Marovec* for the following proposition: "[G]ood cause is a sound, effective and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect." *Marovec*, 693 N.W.2d at 785 (quoting *Handy v. Handy*, 250 Iowa 879, 883, 96 N.W.2d 922, 925 (1959)). This is the definition of good cause ascribed to rule 1.977. The board next cited *Purethane* for the following proposition:

> Defaults which result from the negligence or carelessness of the defendant or defendant's attorney will not be set aside, for the law rewards the diligent and not the careless.

Purethane, 498 N.W.2d at 711. Again, this law arises in the context of civil defaults.

After invoking this case law, the board applied it to the facts before it. Citing Titan Tire's admission that their attorney "inadvertently did not include" references to both citations in his timely-filed notice of contest, the board determined that his failure to do so was nothing more than "ordinary negligence."

The board continued, "If common negligence were good cause for late appeals, then appeal deadlines would lose much of their meaning." The board concluded that "good cause has not been established."

We are convinced the board did not act irrationally, illogically, or wholly unjustifiably in applying the good cause standard of rule 1.977 to the facts. After concluding that the attorney's inadvertence did not rise to that standard, the board imposed a sanction authorized and, indeed, mandated by statute. *See* Iowa Code § 88.8(1) (stating in the event of an untimely appeal, citation "shall be deemed a final order of the appeal board and not subject to review by any court or agency"). In that respect, the case for affirmance of the agency decision is even stronger than in *Marovec*, where the agency's sanction of dismissal was simply permitted by rule rather than required by statute. *Marovec*, 693 N.W.2d at 785. And, the case for affirmance of the agency is arguably stronger than in *Purethane*, where the attorney operated under an incorrect assumption about the appeal deadline. *Purethane*, 498 N.W.2d at 708. Titan Tire concedes it was aware of the fifteen-day deadline but simply failed to include the second citation in its timely appeal notice.

We recognize that the Iowa Supreme Court has attempted to soften the default judgment rule by adopting a four-factor test for excusable neglect. *See Brandenburg v. Feterl Mfg. Co.*, 603 N.W.2d 580, 585 (Iowa 1999). Titan Tire contends the board should have applied this test. We might agree, were this an appeal from a district court's entry of default judgment rather than an agency's dismissal of an appeal. *See Marovec*, 498 N.W.2d at 786 ("[W]e must keep in mind that we are dealing with an agency and *not* the district court."). Here, as in

Marovec, "we are duty bound by statute to give deference to the commissioner's decision in these matters." *Id.* (citing Iowa Code § 17A.19(11)(c)). The agency elected not to apply the four-factor excusable neglect test to mitigate the concededly harsh result. Its decision was consistent with *Marovec*, which post-dated *Brandenburg*, yet did not apply that test. In fact, in *Marovec*, the court categorically stated "oversight is insufficient cause for failing to follow court rules." *Id.* at 785. The board's decision to hew to this clear pronouncement cannot be viewed as irrational.

We affirm the board's dismissal of Titan Tire's second notice of contest.

AFFIRMED.