IN THE COURT OF APPEALS OF IOWA

No. 3-084 / 12-1784
Filed March 27, 2013

CINDY J. BROWN,
Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD,
Respondent-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, DeDra L. Schroeder, Judge.

A former hotel employee appeals a district court's order affirming the Employment Appeal Board's denial of unemployment benefits. **AFFIRMED.**

Jackie D. Armstrong of Brown, Kinsey, Funkhouse & Lander, P.L.C., Mason City, for appellant.

Richard Autry, Employment Appeal Board, Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

TABOR, J.

An employee who quit her job at the Budget Inn contends she is entitled to unemployment benefits. Cindy Brown argues she had good cause to voluntarily leave her position because the hotel's new owners demoted her and reduced her salary after learning her high blood pressure prevented her from working overtime. An administrative law judge (ALJ) determined Brown's decision to quit could not be attributed to her employer and denied benefits. The Employment Appeal Board and district court agreed. We find substantial evidence to support the agency's fact-finding and do not view the denial of benefits as unreasonable, arbitrary, or capricious. Accordingly, we affirm.

I. Background Facts and Proceedings

Brown started working at the Clear Lake Budget Inn as a day shift desk clerk in December 2004. After being promoted to manager, she earned $800 every two weeks. The management position required her to work between forty-five and sixty-five hours per week.

New owners began operating the hotel on September 10, 2011. On September 26, 2011, Brown was hospitalized for high blood pressure and told not to return to work without medical clearance. On September 30, Dr. John Boedeker approved her return to work, but restricted her to forty hours per week.[1] Dr. Boedeker did not specify that Brown's restriction would last only until her blood pressure returned to a normal level, but she testified the doctor told her she could return to her previous hours once she recovered.

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[1] His note read: "Limit to 40 hours of work in a week."

When Brown reported for her shift on October 1, she told her employer: "I could only do 40 hours and it was only until my blood pressure c[a]me back down." At the end of her shift, the new owners offered her a forty-hour per week position as a desk clerk at the rate of $7.25 an hour. The demotion decreased her biweekly pay to $580—the rate of a starting employee. Brown responded: "I'm done," threw her keys, and walked out.

On October 18, 2011, the Iowa Work Force Development Unemployment Insurance Division determined Brown was eligible to receive benefits. Budget Inn appealed the award. An ALJ held a hearing on December 5, 2011.[2] The next day, the ALJ reversed the work force development decision, finding Brown "was on non-work-related medical restrictions which prevented her from carrying out the essential duties of the manager position."

Brown appealed the ALJ's decision to the Employment Appeal Board. On February 20, 2012, two members of the board entered a split decision, which by operation of law affirmed the ALJ's ruling. *See* Iowa Admin. Code r. 486-3.3(3) (providing split by two-member board results in affirming ALJ's decision). The board held: "The Findings of Fact and Reasoning and Conclusions of Law of the administrative law judge are adopted by the Board."[3] Brown requested

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[2] The ALJ received testimony from Brown; her son, Jeff Brown, who was outside the room when his mother quit; Kristie Peter, a representative for Budget Inn; hotel co-owner Devi Patel; and co-worker Janet Hoftiezer.

[3] Although the board's express adoption of the ALJ's fact-findings, reasoning, and conclusions makes them the board's own, *see Loeb v. Employment Appeal Bd.*, 530 N.W.2d 450, 452 (Iowa 1995), we will refer to the findings as those of the ALJ rather than the board.

rehearing, attaching medical records from her hospital stay. The board denied her request.

Brown sought judicial review. On August 13, 2012, the district court received briefs and heard arguments on the matter. On September 10, 2012, the district court denied Brown's petition. She then brought this appeal.

II. Scope and Standards of Review

Iowa Code section 17A.19(10) (2011) governs judicial review of an administrative decision. *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 36 (Iowa 2012). If the agency action prejudiced the petitioner's substantial rights, and the action meets one of the criteria listed in section 17A.19(10), the district court may grant relief. *Evercom Sys., Inc. v. Iowa Utils. Bd.*, 805 N.W.2d 758, 762 (Iowa 2011). We apply the standards set forth in section 17A.19(10) to determine whether our conclusion matches the district court's result. *Id.*

Our standard of review depends upon the petitioner's challenge to the agency's decision. *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012). If the agency is clearly vested with the authority to make fact-findings on an issue, then we may disturb those findings on judicial review only if they are unsupported by substantial evidence when reviewing the record as a whole. *Id.* "Substantial evidence" is "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that

fact are understood to be serious and of great importance." Iowa Code § 17A.19(10)(f)(1).

We judge the agency's findings in light of the relevant evidence on record that may detract from or support it. *Id.* § 17A.19(10)(f)(3). Even if the evidence on record could lead a reasonable fact finder to a different conclusion, we are not called to decide if the record supports a different finding, but if the record supports the finding actually made by the agency. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 632 (Iowa 2000).

Brown's claim also turns on whether the board properly interpreted the provisions on voluntary quitting in section 96.5. "Our review of an agency's interpretation of a statutory provision depends on whether the legislature has clearly vested the agency with discretionary authority to interpret the particular statutory provision." *Waldinger Corp. v. Mettler*, 817 N.W.2d 1, 5 (Iowa 2012). If the legislature has granted authority, we will defer to the agency's decision and may reverse only if it is "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law." Iowa Code § 17A.19(10)(*l*). But if the agency has not been vested with discretion, we owe no deference and may reverse "[b]ased upon an erroneous interpretation of a provision of law." *Id.* § 17A.19(10)(c).

The board argues the department of workforce development has discretionary authority to determine whether an individual is entitled to benefits under section 96.5(1). The board asserts the legislature clearly delegated authority to interpret the statute based on language requiring the board to make

findings regarding an individual's eligibility, ineligibility, and requalification for benefits. Brown acknowledges the statute allows the department to decide whether an employee's decision to quit is attributable to the employer, but argues the legislature did not clearly grant the department discretion to interpret the phrase "good cause."

To determine the proper review of an agency's interpretation of law, we look to the specific language construed by the agency as well as the specific authority and duties given to that agency to enforce the particular statutes. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 13 (Iowa 2010). The legislature did not explicitly vest the department with authority to interpret the terminology in section 96.5(1). *Cf. Iowa Ass'n of Sch. Bds. v. Iowa Dep't of Educ.*, 739 N.W.2d 303, 307–08 (Iowa 2007) (deferring to agency where enabling statute provided agency "shall . . . [i]nterpret the school laws and rules relating to the school laws") (internal quotations omitted). But an agency may enjoy discretionary authority absent express delegation when interpretive powers are nonetheless plainly vested with the agency. *Renda*, 784 N.W.2d at 11. In the absence of express delegation, we examine "the phrases or statutory provisions to be interpreted, their context, the purpose of the statute, and other practical considerations to determine whether the legislature intended to give interpretive authority to an agency." *Id.* at 11–12.

We give deference to an agency's interpretation in a specific matter or one embodied in an agency rule. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012). Indications that the legislature delegated interpretive authority

include "'rule-making authority, decision-making or enforcement authority that requires the agency to interpret the statutory language, and the agency's expertise on the subject or on the term to be interpreted.'" *Id.* at 518–19 (quoting *The Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 423 (Iowa 2010)).

At issue in this case is section 96.5(1), which disqualifies an individual who leaves work voluntarily "without good cause attributable to the individual's employer, if so found by the department." The department elaborated on the phrase "good cause attributed to the employer" in the Iowa Administrative Code rules 871-24.26(1)–(28). Because those rules list additional grounds for good cause, the department's statutory interpretation does not "simply parrot[] the statutory definition of the term." *Cf. Sherwin-Williams Co.*, 789 N.W.2d at 422. The department instead used its expertise in employment issues to fashion rules interpreting the phrase.

Section 96.5(1) provides that a claimant will not be disqualified from benefits "if the department finds that" any of the exceptions in sub-subsections (a)–(h) have been met. And in the case of the health exception relied upon by Brown, the legislature authorized the department to determine whether the facts meet the exception to disqualification. *See* Iowa Code § 96.5(1)(d) (excepting from disqualification an individual who meets certain requirements including that "the individual's regular work or comparable suitable work was not available, if so

found by the department"). The antecedent condition suggests it is within the board's authority to determine whether a claimant has shown good cause.[4]

Contrary to Brown's suggestion on appeal, we do not believe the standard-of-review question can be answered by isolating the phrase "good cause" and determining its meaning independent from the rest of the statute. In this case, we find it is necessary to consider the language of section 96.5 in context. When we do so, we find the legislature has delegated the department the authority to interpret whether "the individual has left work voluntarily without good cause attributable to the individual's employer." *See Burton*, 813 N.W.2d at 257 (noting when an agency must necessarily interpret a term to carry out its duties, courts are more likely to conclude the power to interpret the term was clearly vested in the agency). Accordingly, we defer to the ALJ's rationale and will reverse only if it is "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law." *Id.* § 17A.19(10)(*l*).

III. Analysis

As a general rule, an individual who leaves work voluntarily, absent good cause attributable to the employer, is disqualified for unemployment benefits. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1, 4 (Iowa 2005) (citing Iowa Code section 96.5). In this appeal—as in many unemployment compensation cases involving a "voluntary quit"—the fighting issue is whether the facts presented fall within one of the definitions of "good cause" listed in Iowa Code section 96.5(1)(a)–(j) or in the administrative code rule 871-24.26(1)–(28). *Cobb v.*

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[4] As the board asserts, the delegation aligns with other sections of section 96.5. *See Id.* §§ 96.5(3); 96.5(4); 96.5(8).

Emp't Appeal Bd., 506 N.W.2d 445, 447 (Iowa 1993). Brown has the burden of proving her decision to voluntarily quit was for good cause attributable to her employer. Iowa Code § 96.6(2).

A. Did Brown's Health Restrictions Provide Good Cause for Quitting Attributable to Her Employer?

Iowa's regulatory scheme divides employees' decisions to quit based on health conditions into two categories: (1) separations based on illness or injury not related to their employment, and (2) separations based on work-related illness or injury. *See* Iowa Admin. Code r. 871-24.26(6).

When the separation is not related to conditions of employment, good cause exists if: (a) the claimant acted on the advice of a physician in quitting; and (b) when a physician certified recovery, the claimant returned and offered services to the employer, but the employer had no suitable, comparable work available. Iowa Admin. Code r. 871-24.26(6)(a). "Recovery" is "the ability of the claimant to perform all of the duties of the previous employment." *Id.* A claimant must be fully recovered before returning to the employer to meet the second prong of the test. *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 346 (Iowa 1992).

When the injury or illness leading to separation is related to the employment, the claimant must (a) present competent evidence showing health reasons to justify termination; (b) before quitting, inform the employer of the work-related health problem; and (c) inform the employer the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Iowa Admin. Code r. 871-24.26(6)(b). "Reasonable

accommodation" is "other comparable work which is not injurious to the claimant's health and for which the claimant must remain available." *Id.*

The ALJ found Brown's choice to leave after being stripped of her managerial role was not attributable to the employer, and that Brown had not satisfied her burden to prove good cause, analyzing the question as follows:

> The claimant was on non-work-related medical restrictions which prevented her from carrying out the essential duties of the manager position. The employer was not obligated to accommodate her non-work-related medical restrictions but magnanimously offered her 40 hours per week as a desk clerk with an hourly wage.

Brown complains the ALJ offered only a conclusory statement that her medical condition was not work related. She argues the ALJ's decision did not satisfy the requirement in section 17A.16 that fact-findings be accompanied "by a concise and explicit statement of underlying facts supporting the findings." Brown also contends the ALJ should have placed more stock in Brown's testimony relaying her physician's opinion that her long hours on the job contributed to her health problems.

The board counters that the ALJ's reference to Brown's injury as not work-related may be read as a finding of fact when placed in context. It asserts the ALJ was free to reject Brown's hearsay statements. It categorizes Brown's attack on the ALJ's decision as a challenge to its fact-findings, arguing our role is not to reweigh the evidence, but to determine whether the record supports the ALJ ruling.

"The absence of an express disposition of a material factual issue in an agency decision may be excused on judicial review if it is clear from the context

of the issues considered and the disposition of the case what the finding was on that issue." *Hurtado v. Iowa Dep't of Job Serv.*, 393 N.W.2d 309, 311 (Iowa 1986) (reasoning in such situations the result "telegraphs" the agency findings made on material elements). We agree with the board's position that it is apparent from the context of the ALJ's ruling that it made a reasonable finding that Brown's medical condition was not work related.

Dr. Boedeker's note was the sole medical evidence entered at the hearing and it addressed only the restrictions on the hours of her work week. The doctor's note did not explain the cause of her high blood pressure. The ALJ could consider Brown's testimony concerning the hearsay statements attributed to the doctor. Iowa Code § 17A.14(1); *see Clark v. Iowa Dep't of Revenue & Fin.*, 644 N.W.2d 310, 320 (Iowa 2002). But the ALJ also was free to discount Brown's credibility and give little weight to the hearsay evidence.[5] *See Cedar Rapids Cmty. Sch. Dist. v. Pease*, 807 N.W.2d 839, 847 (Iowa 2011); *Walthart v. Bd. of Dir. of Edgewood-Colesburg Cmty. Sch. Dist.*, 694 N.W.2d 740, 744–45 (Iowa 2005). Substantial evidence supports the ALJ's conclusion that Brown did not establish her high blood pressure was work-related.

Because her health condition was not job-related, to prove good cause for quitting, Brown was required to show her condition prompted her departure, and that when she recovered, she returned to offer services to the employer, but there was no suitable, comparable work available. *See* Iowa Admin. Code r.

[5] Brown also asserts the medical records attached to her request for rehearing corroborates her hearsay testimony. Given our standard of review, the additional evidence supporting a contrary finding does not defeat the agency's decision. *See Insituform Techs., Inc. v. Emp't Appeal Bd.*, 728 N.W.2d 781, 790 (Iowa 2007).

871-24.26(6). It is uncontroverted that at the time of her return, Brown's health condition limited her to a forty-hour work week. She was unable to fulfill her previous role as manager, which required a significantly greater time commitment. Because she was not fully recovered when she returned to the Budget Inn, she could not meet the second requirement for good cause. *See White*, 487 N.W.2d at 346 (quoting *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985) requirement that a claimant be fully recovered to fall within the exception of section 96.5(1)(d)).

Even if Brown's medical condition was work related, she did not inform the new owners of her intent to quit unless they remedied the problem or provided reasonable accommodation.[6] An employee has a duty to provide the employer "notice of work-related health problems and that the employee intends to quit unless those problems are corrected or the employee is otherwise reasonably accommodated." *Suluki v. Emp't Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993). Absent this notice, the employee's decision to quit was without good cause attributable to the employer. *Id.* Providing notice while quitting is too late to allow the employer to remedy the issue. *Cobb*, 596 N.W.2d at 448.

Brown asserts she informed her employer of her health limitations when her shift began on October 1, and did not quit her job until the end of her shift.

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[6] Brown also argues her employer's offer of a lower-paying job as a desk clerk was not a reasonable accommodation of her disability. It is true an employer has a legal obligation to reasonably accommodate a disabled worker. *See Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 723 (Iowa 1993). Because Brown was medically limited to forty hours of work per week, her employer's offer of a full-time job with reduced responsibilities could be considered a reasonable accommodation.

Assuming without deciding Brown provided sufficient notice of her work-related health problem, because she did not provide notice of her intent to quit before she actually quit later that day, she did not satisfy the good cause requirements.

B. Did Brown Quit for Good Cause Based on a Substantial Change in Her Contract of Hire?

Brown contends the reassignment by her employer decreasing her hours and pay constituted a substantial change in the terms of her employment, and therefore she had good cause to quit. She calculates her wages decreased from $800 to $500 per week—a reduction of more than 27 percent.

The board asserts Budget Inn was legally entitled to accommodate Brown's work restriction by placing her on medical leave without pay, but instead chose to offer her a full-time job at a lesser rate of pay. The board characterizes the desk clerk position as a temporary accommodation until Brown recovered, rather than a substantial, permanent modification to her employment.

Certain changes in the contract for hire can constitute good cause attributable to the employer:

> An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Admin. Code r. 871-24.26(1).

A substantial reduction in pay or hours will generally give an employee good cause to quit. *Olson v. Emp't Appeal Bd.*, 460 N.W.2d 865, 867 (Iowa Ct.

App. 1990). We consider whether the employer's decrease was substantial by looking to the facts of an individual case; there is no talismanic percentage figure to separate a reduction that is substantial from one that is not. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700, 703 (Iowa 1988).

The Budget Inn owners offered Brown a forty-hour workweek as a desk clerk, the position for which she was originally hired. Brown responded by stating "I am done," throwing her keys, and leaving. The parties did not discuss whether the new position would be temporary—until she recovered—or permanent. Brown's employer said the $7.25 hourly wage was temporary, and could have increased depending on her capabilities. But when Brown quit, the employer had no way to determine whether her condition would improve or deteriorate.

An employer's offer of an alternative post when the employee is unable to perform her original job is distinguishable from the typical change in contract that provides good cause to quit. *See e.g. Dehmel*, 433 N.W.2d at 702 (reducing hours based on economic circumstances); *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 681 (Iowa 1986) (requiring geographic relocation). In the second situation, an employer makes a unilateral decision to alter the agreement. In the first scenario, the employer, after learning the employee may no longer be able to perform her original services, attempts to find accommodating work. *Cf. Olson*, 460 N.W.2d at 866 (unilaterally reducing hours, pay, and responsibilities).

Brown bears the burden to show a substantial revision to the employment contract. Because she did not fully ascertain the stipulations of her modified

employment agreement before quitting, we do not believe she carried her burden to show good cause.

In sum, the ALJ's factual findings were backed by substantial evidence and its determination that Brown left her job without good cause attributable to her employer was not "irrational, illogical or wholly unjustifiable." Like the district court, we affirm the appeal board.

AFFIRMED.