IN THE COURT OF APPEALS OF IOWA

No. 7-334 / 06-1750
Filed June 27, 2007

PHYLLIS REELFS,
Plaintiff-Appellant,

vs.

EMPLOYMENT APPEAL BOARD,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge.

Phyllis Reelfs appeals from a district court ruling that upheld the decision of the Employment Appeal Board denying her claim for unemployment compensation benefits. **AFFIRMED.**

J. Richard Johnson of White & Johnson, P.C., Cedar Rapids, for appellant.

Richard Autry, Des Moines, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

HUITINK, P.J.

Phyllis Reelfs appeals from the district court ruling that upheld the decision of the Employment Appeal Board (Board) denying her claim for unemployment compensation benefits. We affirm the district court.

I. Facts and Prior Proceedings

Reelfs began working at the University of Iowa in 1985. In September 2004, while working as a secretary, she started to use sick leave and vacation time to cover work missed for various mental health issues. Her last full day of work was September 24, 2004. Reelfs filed a request for leave under the Family and Medical Leave Act. Over the next four months, Reelfs supplied her employer with numerous notes excusing her from work. Each note excused her from work for a specific period of time. As a note neared expiration, she would arrange to have a new note sent to her employer. On January 19, 2005, the employer requested documentation in order to finalize the approval of the designation of FMLA leave. Reelfs did not respond to this request.

The last medical note received by her employer excused her absence through February 9, 2005. Reelfs did not appear for work on February 10 or contact her employer. On Friday, February 11, her employer drafted a letter stating the following:

> This notice is to advise you of our withdrawal of FMLA designation of your current leave due to your failure to provide the requested documentation as stated in my memo to you on January 19th. Your FMLA protected leave therefore ended December 31, 2004.
>
> In order for your continued absence to remain authorized, we require a medical certificate or other appropriate verification, pursuant to Article IX, §10(B)(1) of the collective bargaining agreement between the State of Iowa and AFSCME Council 61.

> Please provide verification by the close of business on Friday, February 18, 2005. Failure to provide verification or a release to return to work by that date may result in our regarding your continued absence as job abandonment, and would constitute grounds for terminating your employment.
>
> Please call me . . . if you have any questions.

This letter was sent to Reelfs via certified mail on Monday, February 14. When Reelfs did not respond by the close of business on Friday, February 18, the University terminated her employment on Monday, February 21, for job abandonment.

Reelfs filed the present claim for unemployment compensation benefits. An Iowa Workforce Development representative issued a decision denying benefits. The decision stated: "Our records indicate you voluntarily quit work on 2/09/05, by failing to report to work for three days in a row and not notifying your employer of the reason. Your quitting was not caused by your employer." Reelfs appealed, and hearings were held before an Administrative Law Judge (ALJ) on May 11 and May 23, 2005.

At the hearings Reelfs presented a letter from her doctor stating that he had faxed her employer notes excusing her from work on two occasions: January 17 (excusing her from work for thirty days) and February 17 (excusing her from work for two weeks). Her employer denied receiving either fax.

A representative for the employer testified that the United States Postal Service website confirmed the above-quoted letter was delivered to Reelf's address at 8:56 a.m. on February 15. Reelfs testified that she was unable to check her mail during this time frame because her depression would not allow her to function or perform daily activities. Despite her inability to function, Reelfs

admitted she left her home on either February 17 or 18 for a medical appointment and left her home to visit her union representative on February 19. Reelfs testified that she learned of the termination on February 23, when a co-worker called to ask why she had left. Reelfs then immediately checked her mail and discovered the letter.

The ALJ issued a decision affirming the representative's decision. The ALJ concluded Reelfs voluntarily left her job because she stopped communicating with her employer and failed to return to work. In doing so, the ALJ made the following pertinent findings of fact: (1) the employer did not receive a response to its January 19 request for FMLA documentation; (2) Reelfs received the certified letter on February 15 and did not respond because she did not read the letter until February 23; (3) Reelfs did not follow up on whether any excuses or documentation were received by her employer.

Reelfs appealed her decision to the Board. The Board adopted the ALJ's decision as its own and affirmed. However, one member of the Board dissented because Reelfs's "mental health problems complicated her communication with the employer." Reelfs filed a petition in district court for judicial review. The district court affirmed the Board's decision, noting there was substantial evidence to support the Board's decision.

II. Analysis

The sole argument raised on appeal is "Whether substantial evidence supports the Agency's decision that Phyllis Reelfs's actions constituted misconduct." Specifically, Reelfs argues there was no "reasonable basis" to disregard her evidence that the medical excuses were faxed to the employer

within the appropriate time frame. She contends the ALJ decision is not supported by substantial evidence because a letter from her doctor indicates he faxed appropriate documentation excusing her from work. She also argues there was not substantial evidence to support the finding that she received the above-quoted letter on February 15 because the employer did not produce a return-receipt substantiating this assertion.

Our review of an agency finding is at law and not de novo. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 271 (Iowa 1995). Because our review is not de novo, we must not reassess the weight to be accorded various items of evidence. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). "Weight of evidence remains within the agency's exclusive domain." *Burns v. Board of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). "We will reverse an agency's findings only if, after reviewing the record as a whole, we determine that substantial evidence does not support them." *Terwilliger*, 529 N.W.2d at 271.

Faxed Documentation. At the hearing, Reelfs presented a letter from her doctor indicating he had faxed notes to her employer on January 17 and February 17. However, she did not present any computerized confirmation letter or other documentation to substantiate her claim that the employer received the faxes. The employer presented evidence that it did not receive either fax. The employer also pointed out that Reelfs did not make any effort to confirm the faxes were received. After reviewing this conflicting testimony, the Board concluded the employer did not receive either fax.

The possibility of drawing two inconsistent conclusions from the same evidence does not mean the agency's findings were not supported by substantial evidence. *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 418 (Iowa 2001). Substantial evidence is what a reasonable mind would accept as adequate to reach a given conclusion. *Titan Tire Corp. v. Employment Appeal Bd.*, 641 N.W.2d 752, 755 (Iowa 2002). The question is not whether there was substantial evidence to warrant a decision that the agency did not make, but rather whether there was substantial evidence to warrant the decision it did make. *Terwilliger*, 529 N.W.2d at 271. Judged by this standard, we conclude there was adequate evidence from which a reasonable mind could find that the employer did not receive either fax. This constitutes substantial evidence for the Board's conclusion that the employer did not receive timely authorization for Reelf's absence.

Certified Letter. A representative for the employer testified that the letter was sent by certified mail and received by Reelfs on February 15. Reelfs contends this does not constitute substantial evidence because there is no written document corroborating the date of delivery. We disagree. The employer's witness provided a detailed description of how the receipt was verified. Reelfs testified that the letter was present when she checked her mail on February 23. We find this constitutes substantial evidence from which a fact finder could conclude the letter was mailed and received by Reelfs on February 15. *Cf. Montgomery Ward, Inc. v. Davis*, 398 N.W.2d 869, 870 (Iowa 1987) ("Proof that a document was properly mailed raises a presumption that it was received.").

Job Abandonment. Under Iowa Code section 96.5(1), an individual is disqualified from receiving unemployment compensation benefits if he or she voluntary quits without good cause attributable to the employer.

> In general, a voluntary quit 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5 . . . . The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> . . . . The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa Admin. Code r. 871-24.25(96) (2005). Chapter 681 of the Iowa Administrative Code sets forth personnel administration rules for employees of the Iowa Board of Regents. Iowa Admin. Code r. 681-3.2(8A). One such rule specifies: "Employees who are absent from duty for three consecutive work days without proper notification and authorization thereof shall be deemed to have resigned their positions." Iowa Admin. Code r. 681-3.104(5). Evidence at the hearing indicated Reelfs was absent for more than three consecutive work days without proper notification and authorization. This is presumed to be a quit without good cause. We find no error in the Board's decision to deny Reelfs unemployment benefits. The district court's ruling is affirmed.

AFFIRMED.