

IN THE COURT OF APPEALS OF IOWA

No. 2-842 / 11-2095
Filed October 31, 2012

GREG E. BAHL,
Petitioner-Appellant,

vs.

EMPLOYMENT APPEAL BOARD,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Karen A. Romano,
Judge.

Greg Bahl appeals from the district court's affirmance of the employment
appeal board's denial of unemployment benefits. **AFFIRMED.**

Benjamin G. Humphrey of Hedberg & Boulton, P.C., Des Moines, for
appellant.

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

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

POTTERFIELD, J.

Greg Bahl appeals from the district court's affirmance of the employment appeal board's affirmance of the administrative law judge's denial of unemployment benefits. He contends the appeal board erred in finding his refusal to accept an assignment from his employer was an act of disqualifying misconduct because compliance with the employer's orders would have violated federal law. Second, he contends the appeal board erred in not considering additional evidence of events he alleges occurred after the administrative law judge's decision but before the board's appeal decision. We affirm, determining the appeal board's finding that Bahl was discharged for disqualifying misconduct is supported by substantial evidence and that the board did not abuse its discretion in declining to consider additional evidence.

I. Facts and Proceedings

Greg Bahl was employed by V & M Farms as an over-the-road tractor trailer driver from July 22, 2008, through April 23, 2010. Bahl drove from the state of Arizona to Kenosha, Wisconsin, arriving in the afternoon of April 22, 2010. He then called his employer to report his arrival and was told to stay the night and the company would find a load for him to haul the next morning. The next morning, the company dispatcher contacted Bahl and told him to pick up a load in Kenosha to take to Albert Lea, Minnesota. Bahl responded that he was already on the way home to Mason City, Iowa and not to tell the company owner.

When the company manager arrived at work, the dispatcher informed him of the situation. The manager called Bahl, who informed him no load was available for dispatch. The manager verified such a load was available, and

asked Bahl for his geographic location. Bahl refused, and the manager informed him he was terminated from employment. Bahl returned the empty truck to the V & M Farms facility with a note informing the company he would be available for dispatch the following week if they would continue his employment.

Bahl filed for unemployment and was initially granted benefits, however, V & M farms appealed, and an administrative law judge found Bahl ineligible for benefits due to disqualifying conduct. Bahl appealed to the Employment Appeal Board, which unanimously affirmed the administrative law judge's decision, adopting that decision as its own. Bahl filed an application to present new and additional evidence of threatening text messages and a conversation with an employee of V & M Farms. This was denied; but the appeals board noted that even if he was allowed to present this evidence, it would not affect the board's decision. Bahl then filed a request for rehearing, asserting the administrative law judge failed to consider whether picking up the Kenosha load as directed by V & M Farms would have required him to violate federal transportation regulations. He also asserted the additional evidence should be considered in light of the administrative law judge's assessment that Bahl's excuses for refusing the load "strain credibility." This request was denied, and Bahl petitioned for judicial review of the action on the same grounds as he presented in his request for rehearing.

The district court noted that while Bahl's logs showed he was over the number of driving hours allowed under federal guidelines, there was no evidence V & M Farms knew he was over hours when it asked him to pick up another load, nor was there evidence Bahl told them he was over hours. The court also noted

Bahl admitted to alteration of the hours in the logs. It found the dispute essentially was one of credibility and the administrative law judge found Bahl was not credible. It noted that regardless of how many hours Bahl had driven, he was instructed to remain in Wisconsin which he did not do. The court concluded by determining the agency's findings were supported by substantial evidence and affirmed. It also noted that the further evidence sought to be admitted was properly excluded.

II. Analysis

Iowa's Administrative Procedure Act, Iowa Code chapter 17A (2009), governs our review of unemployment benefit cases. Section 17A.19(10) provides that a party may successfully challenge an agency decision when the party's substantial rights have been prejudiced because the agency action is unsupported by substantial evidence or is affected by other error of law. The court may affirm, reverse, modify, or grant any other appropriate equitable or legal relief.

Our review is for correction of errors of law. Because it is not de novo, we do not reassess the weight to be accorded various items of evidence. Weight of evidence remains within the agency's exclusive domain. Consequently, if the agency's findings of fact are supported by substantial evidence, those findings are binding on judicial review. Evidence is substantial if a reasonable person would find it adequate for reaching a conclusion, even though a reviewing court might reach a contrary inference. In determining whether substantial evidence exists, the court considers all the evidence, including that offered in opposition to the agency's findings. We apply agency findings broadly and liberally to uphold, rather than to defeat, an agency's decision.

Titan Tire Corp. v. Emp't Appeal Bd., 641 N.W.2d 752, 754–55 (Iowa 2002).

Bahl urges us he was ordered to commit an act which he knew would violate federal regulations and therefore he did not commit misconduct constituting abandonment of his job. Further, he argues that if his behavior did constitute quitting his job, it was for good cause due to illegal working conditions. His

working conditions were illegal, he argues, because V & M Farms requested he haul a load when he was over hours.

We agree with the district court that the employer's knowledge of Bahl's claim he was over hours is essentially a factual issue which involves a credibility determination, a task for which we defer heavily to the agency decision. *Id.* There was no evidence presented that V & M Farms knew Bahl was over hours. Bahl was already on his way back to Iowa when he was informed of the load to haul. Bahl also testified to many different reasons for failing to take the additional load, but now asserts it was for illegal working conditions. He refused to stay in Wisconsin contrary to his employer's directive, which also constituted misconduct.

We also find the board did not abuse its discretion in declining to admit the text message and conversation evidence. *Id.* at 758. The newly created evidence was apparently text messages from a disposable phone and a conversation with a V & M Farms employee in a bar, both of which Bahl found threatening. Bahl asserted these communications would serve to counteract the administrative law judge's finding that he was not credible. As evidence must close at some point, the board was not beyond its discretion in declining to re-open Bahl's case for this particular piece of minimally relevant evidence.

We therefore affirm the agency in accordance with the administrative law judge and district court's well-reasoned opinions.

AFFIRMED.