IN THE IOWA DISTRICT COURT FOR POLK COUNTY

T.L. BAKER & CO. LLP Petitioner, v. EMPLOYMENT APPEAL BOARD, Respondent.	Case No. CVCV067414 **RULING ON PETITION FOR JUDICIAL REVIEW**

The question of this case is whether an employee can receive unemployment benefits after leaving their employment because they refuse to sign a contract that includes a non-compete clause? This matter came before the Court on a Petition for Judicial Review from a final decision of the Employment Appeal Board. Counsel appeared for oral argument on November 1, 2024. Petitioner, T.L. Baker & Co, LLP ("BakerStarrett") appeared through Anna Mallen. Respondent, the Employment Appeal Board ("EAB") appeared through Richard Autry. Upon review of the court file and applicable law, the Court enters the following order:

I. BACKGROUND FACTS AND PROCEDURAL POSTURE

Morgan Zimbleman worked for BakerStarrett as a tax manager from July 15, 2013, until she quit her employment on February 19, 2024. With the exception of 2016, Ms. Zimbleman and the other employees of BakerStarrett signed new contracts each year, which included a non-compete clause BakerStarrett used to preserve its client base. Ms. Zimbleman signed the contracts annually and worked full-time until her final contract, when she requested her hours to drop down to 24 hours per week; her salary was pro-rated from her existing wage to reflect the reduction in hours. Ms. Zimbleman and her husband began constructing a new home in Grinnell, Iowa, in 2023, and she felt she firmly established herself in the community, making it difficult to relocate moving forward.

In early-January 2024, Lindsey Starrett, a partner at the tax firm, dropped off a contract effective October 23, 2023, for Ms. Zimbleman and the other employees to sign. The contract included a non-compete provision, which prohibited Ms.

Zimbleman from performing her services for another employer or herself for two years after the expiration of the employment agreement within thirty miles of Grinnell; this clause was identical to the one contained in the 2022 contract, which Ms. Zimbleman signed.

As was her practice, Ms. Zimbleman did not immediately sign the contract, and Ms. Starrett began to press Ms. Zimbleman to sign it. Ultimately, the two spoke about it on February 15, 2024, and Ms. Zimbleman indicated she would not sign the contract because of the 30-mile non-compete provision. Ms. Starrett sent Ms. Zimbelman a text message the following day indicating it was her understanding that Ms. Zimbelman was unwilling to sign the contract, and this constituted Ms. Zimbelman's resignation. Ms. Zimbelman replied that she did not feel like it was in her best interest to sign the contract but added that she felt like she was still able to perform her duties. BakerStarrett separated Ms. Zimbleman from payroll on February 19, 2024, with the rationale that she had voluntarily quit.

Ms. Zimbleman filed a claim for unemployment benefits, and following the initial decision and contested administrative hearing before an Administrative Law Judge, her case ultimately came before the EAB. The EAB rendered a final agency decision (the "Decision") on May 17, 2024. The Decision adopted the factual findings of the ALJ, but determined Ms. Zimbleman was entitled to benefits because her voluntary quit was with "good cause attributable to the employer." The Decision stated the "key to our analysis of this case is two-fold": (1) Ms. Zimbleman only needed to prove a reasonable belief of illegal or oppressive conditions, and (2) the Federal Trade Commission ("FTC") proposed a rule banning all but a limited few non-compete agreements in the United States. The EAB expressly recognized "neither party was necessarily aware of the pending FTC rule" but nonetheless concluded "a person of reasonable prudence would believe, under the circumstances that the contract was a detrimental condition of employment."

II. STANDARD OF REVIEW

Final decisions rendered by the Iowa Employment Appeal Board are reviewed under Iowa Code Chapter 17A, the Iowa Administrative Procedures Act.[1] "Under the Act, [a court] may only interfere with the [agency]'s decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced."[2] The agency's decision is binding "if it is supported by substantial evidence and not based upon incorrect conclusions of law."[3] The standard of review depends on the type of error alleged by the Petitioner.[4]

If the alleged error is one of fact, the standard of review is whether the findings are supported by substantial evidence.[5] "In determining if there is substantial evidence to support the agency finding, the question is not whether the evidence might support a different finding, but whether there is substantial evidence to support the finding actually made by the agency. Where the evidence is in conflict or where reasonable minds might disagree about the conclusions to be drawn from the evidence, the court is bound to accept the board's findings."[6] Further, the "court must broadly and liberally apply the board's findings in order to uphold rather than defeat the decision. The board's factual findings are binding on appeal unless a contrary result is demanded as a matter of law."[7]

"Because review is not de novo, the court must not reassess the weight to be accorded various items of evidence. Weight of evidence remains within the agency's exclusive domain."[8] It is the "[agency's] duty as the trier of fact to determine the credibility of witnesses, weigh the evidence, and decide the facts in issue."[9] In reviewing an agency decision, the court only determines whether substantial

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[1] Iowa Code §10A.601(7).
[2] *Meyer v. IBP, Inc.,* 710 N.W.2d 213, 219 (Iowa 2006).
[3] *Freeland v. Emp. Appeal Bd.*, 492 N.W.2d 193, 196 (Iowa 1992).
[4] *Jacobson Transp. Co. v. Harris*, 778 N.W.2d 192, 196 (Iowa 2010).
[5] *Bridgestone/Firestone, Inc. v. Emp. Appeal Bd.*, 570 N.W.2d 85, 90 (Iowa 1997).
[6] *Freeland*, 492 N.W.2d at 197 (citing *Aluminum Co. of Am. V. Emp. Appeal Bd.*, 449 N.W.2d 391, 394 (Iowa 1989)).
[7] *Id.*
[8] *Hy Vee v. Emp. Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005).
[9] *Arndt v. City of Le Claire*, 728 N.W.2d 389, 394–95 (Iowa 2007).

evidence supports a finding "according to those witnesses whom the [agency] believed."[10]

If the claimed error is in the ultimate conclusion reached, "then the challenge is to the agency's application of the law to the facts."[11] The reviewing court "allocate[s] some degree of discretion in our review of this question, but not the breadth of discretion given to findings of fact."[12] "When the application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency's application of the law to the facts of the particular case if that application is 'irrational, illogical, or wholly unjustifiable.'"[13]

III. BAKERSTARRETT'S PETITION FOR JUDICIAL REVIEW

Iowa Code section 96.5(1) provides that an individual is disqualified from unemployment insurance benefits "if the individual has left work voluntarily without good cause attributable to the individual's employer." Iowa Administrative Code r. 871-24.26(4) provides that good cause attributable to the employer can be established is "the claimant left due to intolerable or detrimental working conditions." BakerStarrett contends: (1) the EAB erred in relying on a proposed FTC rule to award unemployment insurance benefits; and (2) the EAB erred in finding the restrict covenant constituted an intolerable or detrimental working condition under the Iowa Administrative Code.

A. Reliance on Proposed FTC Rule Regarding Non-Compete Clauses

BakerStarrett initially argues the EAB erred in relying on a proposed—but not-yet-effective (and now enjoined)—FTC rule in awarding Zimbelman unemployment insurance benefits. The EAB does not specifically address this argument with a separate brief point, but instead focuses on the two applicable

[10] *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 661, 614 (Iowa 1996).
[11] *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).
[12] *Id.* at 218.
[13] *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting Iowa Code § 17A.19(10(m)).

standards of review: whether substantial evidence supports the findings of fact, and whether the decision was irrational, illogical, or wholly unjustifiable.

The EAB Decision noted "good cause" "encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith."[14] The EAB then conducted a two-fold analysis: Zimbleman only had to have a reasonable belief that the working conditions were intolerable or detrimental; and the FTC issued a proposed ban on non-compete agreements in the United States. The EAB expressly noted "that the rule was finalized after the refusal to sign" and "[w]e also recognize that neither party was necessarily aware of the pending PTC rule."[15] However, the EAB then generalized that Zimbleman refused to sign the contract "for exactly the reason covered by that regulation" and evaluated whether a reasonable person would believe the contract was a detrimental condition of employment. The Court agrees that reliance on facts (the proposed FTC rule) the EAB specifically noted were not addressed in the record is misplaced. However, that does not end the analysis as the Court must determine whether the remaining evidence supports EAB's findings and whether the conclusion was wholly unjustifiable.

B. Intolerable or Detrimental Working Condition

BakerStarrett contends the EAB's finding of "good cause" attributable to the employer is not supported by substantial evidence and the conclusion that a reasonable person would find the non-compete clause an intolerable or detrimental working condition is irrational, illogical, and wholly unjustifiable. The EAB counters that Zimbleman's stated reason for refusing to sign the contract—the non-compete clause—is a factual issue supported by substantial evidence and the issue then becomes whether it was wholly unjustifiable for the EAB to find she had a reasonable belief that the non-compete was a detrimental or illegal working condition.

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[14] D0006, Agency Record at 0196 (quoting *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986).
[15] D0006, Agency Record at 0197.

Initially, the Court must determine whether the findings of fact were supported by substantial evidence. The ALJ found (and the EAB adopted the finding) that Zimbleman did not want to sign the employment contract because of the non-compete provision, it was not in her best interest to sign the contract, and Zimbleman believed she had firmly established herself in the community and it would be difficult to change communities moving forward in part because she and her husband had began construction on a new home. Under the applicable standard of review, the Court is bound to accept the EAB's finding that Zimbleman had a subjective belief that non-compete was an intolerable or detrimental working condition as that finding is supported by substantial evidence.

Next, the Court turns to whether the legal conclusion that BakerStarrett's requirement that Zimbleman sign a non-compete as a condition of employment constitutes a detrimental condition of employment was irrational, illogical, and wholly unjustifiable. The EAB relied upon the proposed FTC rule banning non-compete clauses to conclude "a person of reasonable prudence would believe, under the circumstances" that the contract was a detrimental condition of employment.

The press release announcing the rule—which at the times was still merely a proposed rule subject to a 90-day public comment period—indicated "Under the FTC's new rule, existing noncompetes for the vast majority of workers will no longer be enforceable after the rule's effective date."[16] The publication announcing the proposed rule, which the EAB attributed a person of reasonable prudence to know about, specifies that those clauses would simply be unenforceable. There is nothing that indicates the clauses would be illegal or have any detrimental effect, because they would merely not be enforced if the rule went through. Additionally, the EAB's finding that the non-compete is objectively detrimental is contrary to the caselaw; the parameters of this non-compete clause fall within terms Iowa appellate courts have repeatedly upheld.[17] It is irrational and illogical for the EAB to impute knowledge of

[16] https://www.ftc.gov/news-events/news/press-releases/2024/04/ftc-announces-rule-banning-noncompetes (last visited November 14, 2024).
[17] *See Cedar Valley Medical Specialist, PC v. Wright*, No. 18-1900, 2019 WL 5063325 at *5 (Iowa Ct. App. Oct. 9, 2019).

proposed FTC rules to an objectively reasonable person while having that same person ignore decades of caselaw. The EAB's conclusions and application of the law were in error; BakerStarrett was prejudiced by the EAB's irrational, illogical, and wholly unjustifiable conclusions and the Decision must be reversed.

ORDER

IT IS THEREFORE ORDERED that the ruling of the Employment Appeals Board is REVERSED. The Petition for Judicial Review is GRANTED. No costs shall be assessed pursuant to Iowa Code section 625.29(1)(d).

State of Iowa Courts

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CVCV067414	TL BAKER AND CO LLP VS EMPLOYMENT APPEAL BOARD
Type:	ORDER FOR JUDGMENT

So Ordered

Christopher Kemp, District Court Judge,
Fifth Judicial District of Iowa

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