IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

HAROLD R ANDERSEN ET AL
Claimant

STANDARD READY MIX CONCRETE LLC
STANDARD READY MIX
Employer

APPEAL NO. 08A-UI-00844-SW

ADMINISTRATIVE LAW JUDGE DECISION

OC: Various Dates R: 01
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-4 – Labor Dispute

STATEMENT OF THE CASE:

The 18 claimants listed on Attachment A appealed unemployment insurance decisions issued on January 11 or January 14, 2008, denying them benefits. A prehearing conference was held on January 24, 2008, with Maynard H. Weinberg, Attorney at Law, appearing on behalf of the claimants and Chad P. Richter, Attorney at Law, appearing on behalf of the employer, Standard Ready Mix. The parties stipulated and agreed that the appeals in these cases could be consolidated and a decision could be issued binding on the employer and the listed claimants pursuant to 871 IAC 26.6(6). The parties further stipulated that the decision in this consolidated appeal would be based on the record made during a hearing conducted in Sioux City, Iowa, on January 14, 2008, in regard to appeal numbers 07A-UI-00199-SW (Russell Johnson v. Standard Ready Mix), 07A-UI-00200-SW (James Barnes v. Standard Ready Mix), 07A-UI-02894-SW (Michael Rose v. Standard Ready Mix), and 07A-UI-02906-SW (Troy Orr v. Standard Ready Mix). That record consists of (1) an audio recording of the hearing, (2) Claimants' Exhibits A, B, and C, (3) Employer's Russell Johnson Exhibits 1-20, (4) Employer's James Barnes Exhibits 1-17, (5) Employer's Michael Rose Exhibits 1-33, and (6) Employer's Troy Orr Exhibits 1-22. The parties had stipulated to admission of the Employer's Exhibits. I had reserved ruling on the Claimant's Exhibits A, B, and C, based on the employer's objection that the documents were not relevant. My ruling is that the documents are relevant to the issues raised by the claimants, I have thoroughly reviewed each of them in making this decision, and they are entered into evidence. Briefs were submitted by both parties.

PROCEDURAL HISTORY:

It is important in making this decision to trace the history of these cases. Official notice is taken of the Agency's records regarding the procedural history of these cases. If a party objects to taking official notice of these matters, the objection must be submitted in writing no later than seven days after the date of this decision. All of the listed claimants filed for unemployment insurance benefits after they went out on strike on October 16, 2006. The Unemployment Insurance Services Division (UISD) determined a stoppage of work due to a labor dispute had occurred at the employer's premises on October 16, 2006, but the claimants were eligible for

benefits effective November 12, 2006, due to the hiring of replacement workers and a reduction in the need for employees during the off season.

The employer appealed these decisions and the appeals were consolidated for the purpose of hearing the appeals and making a decision. Each of the listed claimants was a party to the consolidated appeal 07A-UI-00198-A. After the hearing in which both sides participated, the administrative law judge issued a decision on August 16, 2007. In the decision, the claimants were: (1) denied benefits from October 15 though 21, 2006, due to a stoppage of work resulting from a labor dispute, (2) allowed benefits from October 22, 2006 through March 10, 2007, because the employer sent out a letter to the claimants stating it would begin to hire permanent replacements on or before October 23 and offered no assurance that continuing work was available to them despite the hiring of permanent replacements, and (3) denied benefits after March 10, 2007, because the employer sent out letters to the claimants on March 13 stating job openings were available immediately. The deadline for appealing the decision was August 31, 2007. Neither the claimants nor the employer appealed this decision to the Employment Appeal Board.

On September 11 or 12, 2007, each of the listed claimants was determined overpaid the benefits he had received after March 10, 2007, based on the decision in 07A-UI-00198-A. The claimants timely appealed the overpayment decisions. Each claimant asserted he was entitled to unemployment insurance benefits under 871 IAC 24.26(4) because he left employment due to intolerable or detrimental working conditions based on the employer's failure to provide him with a written guarantee of his vested accrued pension benefits. Decisions were issued on each appeal on October 12, 2007. The administrative law judge affirmed each overpayment decision but concluded that he could not resolve the issue of whether the claimant's separation from employment was a disqualifying event because the employer was not a party to the present case and remanded that issue to the UISD for an initial determination. The claimants appealed the decisions on the overpayment issue to the Employment Appeal Board. On November 19, 2007, the Employment Appeal Board issued a decision ruling in each case that the appeal was premature, since a decision on the separation might cause there to be no overpayment or a different overpayment amount. The matter was remanded to the appropriate division within the department to decide the issue.

The UISD considered the issue remanded by the administrative law judge of whether the claimant's separation from employment was a disqualifying event and took information and arguments from the parties. On January 11, 2008, the UISD made determinations regarding seven claimants: Daniel Bromander, Jack Garthright, Tom Gates, Vernon Gries, Dale Smith, Steven Speth, and Troy Taylor. In each case, the UISD cited the claimant's argument that he had good cause to quit or was constructively discharged based on the employer's reduction in his pension benefits but determined that no discharge, voluntary quit, or lockout had occurred and each claimant was ineligible for benefits. On January 14, 2008, the UISD made determinations regarding the remaining eleven claimants. In each case, the UISD determined the claimant had voluntarily quit employment without good cause attributable to the employer but quit on different dates: Harold Andersen (September 2, 2007), Brett Conklin (April 22, 2007), Steve Davis (May 7, 2007), Robert Finnegan (June 14, 2007), David Flom (April 1, 2007), Bradley Henderson (April 1, 2007), Allen Johnson (July 15, 2007), Herb Langley (May 14, 2007), Josh Reilly (July 1, 2007), Thomas Roberts (April 1, 2007), and Gary Taylor (July 22, 2007). No specific determination was made in the second group of cases on the good-cause-to-quit/constructive-discharge issue. I am not able to resolve how the UISC arrived at the dates or what format to use for the decisions. The information and arguments provided by the parties were identical in each case. Ultimately, I conclude the differences in the format of decisions issued and dates are of no consequence in making a decision in this case. On January 18,

2008, Maynard H. Weinberg, Attorney at Law, appealed each of these decisions on behalf of the 18 claimants.

ISSUE:

Are the claimants qualified for unemployment insurance benefits because they had good cause to quit or were constructively discharged?

FINDINGS OF FACT:

The claimants named in Attachment A were employees of Standard Ready Mix Concrete, LLC (employer) and members of Teamsters Local 554 on October 16, 2006. The collective bargaining agreement in effect was to expire on October 15, 2006. The employer and union representatives met in October 2006 to attempt to negotiate a new collective bargaining agreement, but the parties were unsuccessful in resolving all the issues as of October 15. The claimants and other employees went out on strike on October 16, 2006, due to issues that were unresolved during contract negotiations.

One of the key issues that caused the claimants to go out on strike was the employer's failure to provide a guarantee of vested accrued pension benefits in the pension plan. The plan had been amended in May 2002 to freeze the plan so that no new members could be added to the plan and current members of the plan would accrue no additional benefits. The claimants were all current members of the plan and were concerned that their vested accrued pension benefits would not be paid when they became eligible for benefits. They sought a written guarantee of their vested accrued pension benefits in the pension plan, but such a guarantee was not provided by the employer.

When the claimants went out on strike on October 16, they had no intention of permanently severing their employment relation with the employer. They went out on strike with the intention of exerting pressure on the employer to get the employer to agree to the terms they desired for the contract. When the claimants went out on strike on October 16, the employer considered them and treated them as employees on strike and not as workers who had voluntarily quit employment. The employer was providing work under the terms of the prior contract when the employees went on strike on October 16, 2006.

The claimants and the employer were parties to and litigated appeal 07A-UI-00198-A. The decision concluded the claimants were: (1) denied benefits from October 15 though 21, 2006, due to a stoppage of work resulting from a labor dispute, (2) allowed benefits from October 22, 2006 through March 10, 2007, due to a letter sent to the claimants about the hiring of permanent replacement workers and the absence of any assurance from the employer that continuing work was available to the claimants, and (3) denied benefits after March 10, 2007, because the employer sent out letters to the claimants on March 13 stating job openings were available immediately. The deadline for appealing the decision was August 31, 2007. Neither the claimants nor the employer appealed this decision to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

My authority in this case is limited to deciding whether the claimants are qualified for unemployment insurance benefits because when they went on strike they had good cause to quit or were constructively discharged based on the employer's failure to provide a guarantee of vested accrued pension benefits to them.

An argument could be made that this issue should be decided based on principles of claim preclusion. Under claim preclusion, adjudication in a former suit between the same parties on the same claim is final as to all matters that were or could have been presented to the court for determination, and a party must litigate all matters growing out of its claim at one time rather than in separate actions. State ex rel. Iowa Dept. of Natural Resources v. Shelley, 512 N.W.2d 579 (Iowa Ct. App. 1993). The claimants assert they raised and briefed the good-cause-to-quit/constructive-discharge issue in appeal 07A-UI-00198-A but the issue was not decided by the administrative law judge. If this assertion is true, the claimants had the right to appeal to the Employment Appeal Board and use the administrative law judge's failure to rule on this issue as grounds for the appeal.

Because of the procedural posture of this case, however, claim preclusion is not appropriate. The administrative law judge who decided 07A-UI-00198-A also heard the overpayment appeals. He remanded the cases to the UISD for an initial determination on the issue of whether the claimant's separation from employment was a disqualifying event. Based on the reasons stated in the claimants' overpayment appeals, the separation issue that was remanded is the same good-cause-to-quit/constructive-discharge issue listed as the issue in this case. The UISD received information and arguments from the parties on this issue and issued decisions on the separation issue, which the claimants have appealed. Considering this history, it would be improper at this stage of the proceedings not to consider and decide this issue, which has not been previously decided and upon which both parties have presented evidence and arguments.

Before turning to the merits of the issue in this case, it is important to understand the purpose of the unemployment insurance law's labor dispute disqualification. Every state has some form of "labor dispute disqualification" under which workers are ineligible to receive unemployment benefits if their unemployment is due to a labor dispute. Twenty-eight Members of Oil, Chemical and Atomic Workers Union (OCAWU) v. Empl. Sec. Div., 659 P.2d 583, 588 (Alaska 1983). The purpose of such laws is to make the state neutral between the parties to a labor dispute. Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85, 96 (Iowa 1997); John Morrell & Co. v. Department of Labor, 460 N.W.2d 141, 143 (S.D. 1990); Steven A. Wise, Steering A Neutral Course--Applying The Unemployment Law's Labor Dispute Disqualification In South Dakota, 38 S.D. L. Rev. 296, 299 (1993). Applying this policy, the merits of a labor dispute are immaterial to determining eligibility for benefits under the unemployment law, and the unemployment compensation agency must refrain from deciding on the merits of the dispute. Twenty-eight Members of OCAWU, 659 P.2d at 591; Inter-Island Resorts, Ltd. v. Akabane, 377 P.2d 715, 724 (Haw. 1962).

The claimants argue they are qualified for unemployment insurance benefits because when they went out on strike on October 16, 2006, they had good cause to quit or were constructively discharged based on the employer's failure to provide a guarantee of vested accrued pension benefits to them. These arguments fail for the reasons set forth below.

Both as a factual and legal matter, the claimants did not voluntarily quit employment when they went on strike. Factually, to voluntarily quit means "discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." 871 IAC 24.25. To establish a voluntary quit requires that a claimant must intend to permanently sever the employment relationship. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). As the findings of fact establish, when the claimants went out on strike on October 16, they did not intend to quit or permanently sever their employment relationship. They went out on strike to pressure the employer to agree to terms so they could return to work.

Legally, striking workers have not voluntarily quit employment when they go on strike. Validly adopted rules have the force and effect of law. Iowa Federation of Labor, AFL-CIO v. Iowa Dept. of Job Service, 427 N.W.2d 443, 447 (Iowa 1988). Iowa Rule 871 IAC 34(3) states the relationship between employer and employee continues during the period of the labor dispute unless severed by the employer or employee. Furthermore, absence from the job is not a leaving of employment where the worker intends merely a temporary interruption in the employment and not a severance of the employment relationship. Such is the case of strikers who have temporarily interrupted their employment because of a labor dispute. Inter-Island Resorts, Ltd. v. Akabane, 377 P.2d at 725. My research discloses no Iowa precedent on this issue, but courts reviewing unemployment insurance cases in other states have consistently decided striking workers are not deemed to have severed the employment relationship and the voluntary quit statute does not apply. Id.; John Morrell & Co. v. Department of Labor, 460 N.W.2d at 146. These decisions are persuasive, and I conclude the voluntarily quit statute does not apply to the claimants' stopping work to go on strike.

The claimants would like to show that they are eligible for benefits because they had good cause to quit when they went out on strike—even if they did not quit. This puts the cart before the horse. The good-cause-to-quit standard applies only to employees who have actually quit their employment. The claimants did not quit their employment, they went on strike. The cases cited by the claimants (e.g. Dehmel v. Employment Appeal Board, O'Brien v. Employment Appeal Board) to support their argument that they had good cause to quit do not apply to this case because they all involved claimants who actually quit employment. Deciding whether the claimants had good cause to quit would also violate the neutrality principles stressed by the Iowa Supreme Court in the Bridgestone/Firestone, Inc. case, since it would require evaluating the justification of the strike to judge whether the claimants left work with or without good cause. Inter-Island Resorts, Ltd. v. Akabane, 377 P.2d at 724-25.

The claimants offer a second, slightly different argument. That is, they are eligible for benefits because the employer constructively discharged them based on the employer's failure to provide a guarantee of vested accrued pension benefits. The doctrine of constructive discharge provides that a constructive discharge occurs when the employer deliberately makes an employee's working conditions so intolerable that the employee is forced to resign. Haberer v. Woodbury County, 560 N.W.2d 571, 575 (Iowa 1997); Balmer v. Steel, 604 N.W.2d 639, 642 (Iowa 2000). The Iowa Supreme Court in Balmer very cogently explains that an employer may refrain from actually firing an employee to avoid liability for wrongful discharge or employment discrimination, preferring instead to engage in conduct causing the employee to quit. "The doctrine of constructive discharge addresses such employer-attempted "end runs" around wrongful discharge and other claims requiring employer-initiated terminations of employment." Id. at 641. This doctrine, however, has no application to an unemployment insurance case, because the unemployment insurance law (Iowa Code § 96.5-1) grants benefits to claimants who quit employment with good cause attributable to their employer and the rules (871 IAC 24.26(4) and 871 IAC 24.26(1)) specifically provide that claimants who quit employment due to intolerable or detrimental working conditions or a substantial change in the terms and conditions of employment are eligible for benefits. Consequently, there is no need to "construct" a discharge in an unemployment case. Additionally, every constructive discharge case involves an employee who has quit employment, which as discussed in the previous paragraph did not happen here.

The UISD's decisions refer to a line of cases—Almada v. Administrator Unemployment Comp., 77 A.2d 765 (Conn. 1951) and Erie Forge & Steel Corp. v. Unemployment Compensation Bd., 163 A.2d 91 (Pa. 1960)—said to establish a rule of law that a substantial reduction in the terms and conditions of employment at the expiration of a contract can amount to a lockout entitling

claimants to benefits. First, the claimants have not argued that there was a lockout by the employer in this case. Second, the test for when a lockout occurs in Iowa was settled in the Alexander v. Employment Appeal Bd., 420 N.W.2d 812 (Iowa 1988) and has been codified by rule in 871 IAC 24.34(8). The Iowa Supreme Court in Alexander concluded the labor dispute disqualification does not apply if there is an employer's lockout. Id. at 814. The court defined a lockout as "a cessation of the furnishing of work to employees or a withholding of work from them in an effort to get for the employer more desirable terms." Id. Finally, relying specifically on the reasoning of Erie Forge, the court ruled that where employees offer to continue working under the terms of a pre-existing contract pending final settlement of a labor dispute, the failure of the employer to provide work under those terms constitutes a lockout. Id. at 815. The rule 871 IAC 24.34(8), promulgated after Alexander was decided, contains identical requirements. Under the facts of this case, there was no lockout, since the employer was providing work under the terms of the prior contract when the employees went on strike on October 16, 2006.

The last matter to address is the difference in the format of the decisions appealed in this case. As mentioned in the procedural history, the seven decisions issued on January 11, 2008, specifically referenced and decided the good-cause-to-quit/constructive-discharge issue. The other eleven decisions issued on January 14, 2008, did not specifically reference and decide the good-cause-to-quit/constructive-discharge issue but instead determined the claimants had voluntarily quit employment without good cause on different dates. My judgment is that the object of the remand was to allow resolution of the issue of whether claimants were qualified for benefits as of October 16, 2006, because they had good cause to quit or were constructively discharged. That issue has been the claimants' focus throughout the proceedings. It seems the UISD went beyond the remands' objective to adjudicate alleged separations after October 16, 2006. My ruling is that the decision in this case applies to all 18 claimants no matter the format of the decision issued. If Harold Andersen, Brett Conklin, Steve Davis, Robert Finnegan, David Flom, Bradley Henderson, Allen Johnson, Herb Langley, Josh Reilly, Thomas Roberts, or Gary Taylor wish to appeal the separate voluntary quit disqualifications imposed in the decisions issued January 14, 2008, they must submit appeals to the Appeals Bureau of Iowa Workforce Development explaining the grounds for their appeals within ten days from the date of this decision.

The final adjudicatory decision of an administrative agency carries the same preclusive effect as any other judgment. Toomer v. Iowa Dept. of Job Service, 340 N.W.2d 594, 598 (Iowa 1983); State ex rel. Iowa Dept. of Natural Resources v. Shelley, 512 N.W.2d 579, 580 (Iowa Ct. App. 1993). Iowa Code § 96.6-4, which provides that a finding, conclusion, judgment, or final order by an administrative law judge is binding only upon the parties to proceedings brought under chapter 96 and is not binding in other proceedings before other agencies or courts. Consequently, the decision in consolidated appeal 07A-UI-00198-A became final and binding on the parties as to the facts that were actually found and the legal issues actually ruled on in that case since the decision was not appealed.

DECISION:

The unemployment insurance decisions denying benefits to the claimants on the basis that no discharge, voluntary quit, or lockout had occurred on October 16, 2006, is affirmed. The claimants and employer remain bound by the decision in appeal 07A-UI-00198-A concerning eligibility for unemployment insurance benefits under Iowa's labor dispute disqualification. As a result, the claimants are: (1) denied benefits from October 15 though 21, 2006, (2) allowed benefits from October 22, 2006 through March 10, 2007, and (3) denied benefits after March 10, 2007. If the claimants wish to appeal voluntary quit disqualifications issued on January 14,

2008, they must submit appeals to the Appeals Bureau explaining the grounds for their appeals within ten days from the date of this decision.

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Steven A. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

saw/kjw

ATTACHMENT A – CONSOLIDATED READY MIX APPELLANTS

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