

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**TIMOTHY R BOLEYN**

Claimant,

and

**FIGANBAUM TRUCKING INC**

Employer.

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**HEARING NUMBER: 11B-UI-05755**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Timothy R. Boleyn, worked for Figanbaum Trucking, Inc. from September 3, 2010 through March 18, 2011 as a full-time truck driver. (Tr. 2-3, ) On March 18<sup>th</sup>, the Claimant hauled a load of grain to Cedar Rapids. When he returned to retrieve another load of grain, he experienced trouble with his truck, i.e., the "...air bag on the rear suspension completely [came] apart..." (Tr. 3, 4, 7) Mr. Boleyn was frustrated with the situation, as this was not the first time he had an incident with his truck. A few months ago, he forgot to put the landing gear down prior to unhooking from the tank. (Tr. 7) On another occasion, he left product in the tank. (Tr. 7) The Employer reprimanded him. Mr. Boleyn figured he would be fired for the air bag incident. (Tr. 7)

In the meantime, he heard from a previous prospective Employer in Waterloo the night before and decided to go interview for that job the following Monday. (Tr. 3-4) Unbeknownst to the Employer, the Claimant cleaned out his truck on the 18<sup>th</sup> after his trip to Cedar Rapids and later presented the keys to the Employer and quit. (Tr. 3, 5-6) The Employer had continuing work available for Mr. Boleyn if he stayed. (Tr. 3) The Employer wished him well and commented he would be better off. (Tr. 6)

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2009) provides:

An individual shall be disqualified for benefits: *Voluntary Quitting*. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25 provides:

*Voluntary quit without good cause*. 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 claimant has the burden of proving that the voluntary leaving was for good cause attributable to the Employer. Iowa Code §96.6(2) (amended 1998).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. The Claimant testified that he had already applied for work at another location when Figanbaum offered him a job. Although he experienced a few incidents with his truck as a result of his own oversight, the Employer did not intend to sever their employment relationship. Rather, the Claimant, in anticipation of what he mistakenly believed was a forthcoming termination, quit his employment. A Claimant's belief that he was terminated without further inquiry is the equivalent of a voluntary quit without good cause attributable to the Employer. See, LaGrange v. Iowa Dept. of Job Service, (Unpublished, Iowa App. 1984) The Employer provided credible testimony that he was not fired, nor was Mr. Boleyn ever told he would be fired. (Tr. 3, 6, 8) Based on this record, we conclude that the Claimant initiated his own separation.

871 IAC 24.1(113)"b" provides:

*Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

*Quits*. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

871 Rule of two affirmances. IAC 23.43(3)

- a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.
- b. However, if the decision is subsequently reversed by higher authority:
  - (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
  - (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
  - (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

**DECISION:**

The administrative law judge's decision dated May 26, 2011 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit his employment without good cause attributable to the Employer. Accordingly, the Claimant is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)"g".

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

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Elizabeth L. Seiser

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Monique F. Kuester