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

JENNIFER M BEIER	:	
	:	**HEARING NUMBER:** 14B-UI-03668
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
IA DEPT OF HUMAN SVCS/GLENWOOD	:	
	:	**(SEALED)**
Employer.	:	

N O T I C E

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: 96.5-2-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. With the following modification, the majority members of the Appeal Board find the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would make the following addition to the administrative law judge's reasoning and conclusions of law:

The Petitioner seems to suggest that because the parties agree to call this separation a quit, we are somehow bound by this designation. All the Petitioner has to support the claim is *Efkamp v. IDJS* 383 N.W.2d 566 (Iowa 1986). But in *Efkamp* the union had negotiated a wage reduction and the claimant quit. The Court found that the federally mandated role of the union as the exclusive bargaining representative of the employees in the bargaining unit meant that the claimant was deemed to have concurred in the change of contract. The case at bar is a far cry from this, as the issue isn't whether the union can bind the Claimant, as in *Efkamp,* but rather whether the union, the Claimant, and the Employer can bind the tribunal adjudicating the issue of unemployment compensation. Clearly, they cannot.

In general, the courts have made clear the self-contained nature of the Employment Security Law. In *Christensen v. EAB*, No. 11-1715 (Iowa App. 10/3/2012) *further review denied* 11/28/2012, the employer argued that a coach "failed to exhaust his administrative remedies by not appealing [under Iowa Code §§ 279.17,18] the termination of his contracts, after the School Board found he had committed misconduct." *Christensen* slip op. at 6. The employer argued this failure to appeal was a bar to a finding allowing benefits. The Court rejected the argument noting "[t]he claimed wrong here is not the School Board's termination of Christensen's contracts, but the agency's denial of post-termination unemployment benefits." *Id.* The Court went on to set out the common scheme of remedies exception to res judicata. The Court found that "[t]he termination of Christiansen's employment contracts and the denial of unemployment benefits were separate determinations, by separate entities. Therefore Christiansen was not required to exhaust his administrative remedies regarding the propriety of the termination of his contracts with the School District to challenge the propriety of the denial of unemployment benefits by the agency." *Id.* slip op. at 7. Thus the outcome of a post-termination process has no bearing on the unemployment agency decision to allow or deny benefits. See *also Matter of Kjos*, 346 N.W.2d 25 (Iowa 1984)(UI finding of misconduct irrelevant to civil service determination of misconduct under common scheme of remedies exception). The Court has similarly made clear that procedural protections negotiated by a federally recognized collective bargaining agreement are not relevant to unemployment. "Generally the provisions of a collective bargaining agreement are not pertinent to a determination of a claimant's eligibility for unemployment benefits since making such an inquiry would tend to involve Job Service in the 'morass of labor disputes preempted by the federal government.'" *Crane v. Iowa Dept. of Job Service*, 412 N.W.2d 194, 198 (Iowa App. 1987). The case to first set out this principle was *Central Foam Corp. v. Barrett*, 266 N.W.2d 33 (Iowa 1978). In *Central Foam* the workers went on strike and were fired. The employer there contended the strike was not authorized because of a governing CBA. At that time unemployment disqualification for discharge was different than for quits. The unemployment agencies found discharge for some and disqualified for the limited term, and for others allowed benefits altogether. The district court relied on federal labor law in making its determination on benefits. The Supreme Court rejected this approach. While recognizing the field of labor law was pre-empted by the federal NLRA, the Court refused to be bound by federal doctrines of labor law in applying "unrelated state statutes, [and] taking into account the fact that a labor dispute exists or in recognition of why it exists in order to sort out unemployment benefits." *Central Foam* at 35. Although the employer claimed the termination was justified by violation of the CBA, the Court refused to consider this argument. "The employer of course believes the replacement of the striking workers was fully justified. But we cannot, on this record, find the replacement was justified unless we do so on the same basis as did the trial court: by interpreting and applying the national labor relations act. To do so would, as the department contends, launch us into the labor field, a venture not demanded by chapter 96." *Central Foam* at 35. The Court went on to note that the employer continued to have its full legal rights to enforce labor law violation, but concluded with the simple observation, so pertinent here, that "[o]ur consideration is limited to chapter 96 benefits." *Id.* Even more germane to the case at bar is *Crane v. Iowa Dept. of Job Service*, 412 N.W.2d 194 (Iowa App. 1987). In *Crane* the claimant argued, not unlike the Claimant does here, that "the determination of misconduct was not a proper issue for Job Service to consider because the collective bargaining agreement between the union of which he was a member and Metz provides for written disciplinary warnings prior to any discharge. Claimant alleges this provision was violated by Metz and asserts this violation precludes Job Service from finding misconduct and estops Metz from contending his act constituted misconduct." *Crane* at 197-98. The Court noted that as a general rule the "morass" of labor law has no relevance to unemployment benefits. The Court then ruled that "requiring Job Service to predicate benefits determinations upon its resolution of grievances would indeed plunge the agency into the 'morass of labor disputes.' We uphold the decision of Job Service finding the alleged violation irrelevant to its determination of claimant's eligibility for unemployment benefits." *Crane* at 198.

Union negotiated settlements characterizing the separation are even less binding. Not only do they involve unrelated federal laws, but like any agreement they are merely binding on the parties to the contract, not this Board. This case is not a lawsuit between two private parties. It is an application for unemployment benefits. The Employer is given a right to protest such benefits, but the agency is charged with determining benefit eligibility even if no protest is filed. The Code makes this clear, as has the Iowa Supreme Court.

Long has it been the rule that "an agreement of private persons does not derogate from public law." Black's Law Dictionary, 1747 (8th ed. 2004), *see also Coke on Littleton*, Book II, Ch. XXIV 166a (1628)("Privatorum conventio juri publico non derogat."). In keeping with this ancient maxim of law, the Iowa Code directs that once a claim for benefits is filed "[t]he representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid…and whether any disqualification shall be imposed." Iowa Code §96.6(2); accord 871 IAC 24.19(1) ("Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain."); Iowa Code §96.15 (misdemeanor for employer to seek waiver of benefit right as part of a settlement). Under this provision, it is the claims representative who decides initially whether benefits are allowed. And this is done by taking the initiative to uncover information, and is based on facts found by the agency. It is not based on a position taken by the parties before the agency. This is why even if no properly formatted protest is filed "[i]f the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits." 871 IAC 24.8(2). Such a filing triggers the duty by the agency to determine benefit rights. Very often the information supplied in an application for benefits, or in response to the voice response system for filing for continued claims, will be sufficient for the agency to deny benefits. The rules of the Department expressly require that a Claimant for benefits must in the claim for benefits itself truthfully state "[t]he reason for separation from work." 871 IAC 24.2(1)(b). In the case at bar truthful information from the Claimant would be that she lost her job because of her misconduct.

Because of the agencies' independent duty to determine claim eligibility the Iowa Supreme Court has found that even withdrawal of a protest does not affect the agency's duty to determine benefits. *Kehde v. Iowa Department of Job Service*, 318 N.W.2d 202, 205-06 (Iowa 1982). Subsequently in *Flesher v. Iowa Dept. of Job Service*, 372 N.W.2d 230 (Iowa 1985) the Court found that even where an employer does not raise the issue of misconduct (because it claims a quit took place) **"[t]he agency may initiate an issue that would disqualify a claimant from benefits because of misconduct."** *Flesher* at 233 (Iowa 1985)(emphasis added) *accord Swanson v. Employment Appeal Bd*., 554 N.W.2d 294 (Iowa App. 1996); *Crescent Chevrolet v. Iowa Dept. of Job Service*, 429 N.W.2d 148 (Iowa, 1988)(In discussing power of Board to remand on an issue the *parties had stipulated to* the Court ruled "We do not think that this authority, vested in the appeal board, is a provision which may be 'waived' by the parties."; *see Mary R. v. B & R Corp*., 149 Cal.App.3d 308, 317, 196 Cal.Rptr. 871, 876 (1983) (stipulation which, in effect, prohibits agency from performing its statutory obligations and functions will not be enforced). The Supreme Court has thus recognized that the agencies have a statutory obligation to fulfill that is not dependent on the agreement of the parties. This rule in Iowa is consistent with the position taken in other jurisdictions that a private agreement does not prevent an unemployment agency from independently determining benefit rights. *E.g. Reynolds Metal Co v. Couch*, 648 S.W.2d 497, 499 (Ark. App. 1983)("An employee and employer cannot contract eligibility to unemployment compensation; the employee must come within the provisions of the statute to be eligible."); *Roberts v. Chain Belt Co.*, 2 Wis.2d 399, 86 N.W.2d 406 (1957). The determination of benefit eligibility is not married to whatever position an employer and claimant may take.

Finally, even if we analyze the case as a quit, still we would not grant benefits. We take the view that where a quit a Claimant is told to quit or be fired, and the Claimant opts to quit, then the claimant will still be disqualified if the employer can prove that it was misconduct that led to the separation. In general, the Administrative Law Judges of Iowa Workforce take this view. For example, Administrative Law Judge Steve Wise has explained:

> The unemployment insurance rules state that when a claimant is compelled to resign when given the choice of resigning or being discharged, it is not considered a voluntary leaving. 871 IAC 24.26(21). In such a case, the separation is treated as a discharge and the question becomes whether the discharge was for misconduct.

Murray v. Dept of veteran's Affairs, 08A-UCFE-00011-SWT (3/18/08)(imposing disqualification for misconduct); *accord Miller v. Vendor's Unlimited*, 05A-UI-01997-S2T (2005)(ALJ **Scheetz** subjects case to misconduct analysis because "The claimant's separation was involuntary and must be analyzed as a termination."); *Sisson v. Mercy Hospital,* 04A-UI-10579-RT (2003)(ALJ **Renegar** writes "when she was given the choice of resigning or being discharged and this is not a voluntary leaving and is treated, at least for unemployment insurance benefit purposes, as a discharge. Therefore, disqualifying misconduct must be determined."); *Green v. Electric Pump, Inc.* 10A-UI-10034-VST (2010)(ALJ **Seeck** writes "Iowa law is clear that if an employee is given the choice of resigning or being terminated, this is not a voluntary leaving on the part of the employee. Accordingly, these cases are analyzed as a discharge for misconduct."); *Rick v. Cloverleaf Cold Storage*, 06A-UI-10030-NT (2006)(Judge **Nice** disqualifies based on misconduct where claimant given choice of quit or be fired); *Stokesbary v. IPC Int'l Corp,* 09A-UI-18400-JTT (2009)(ALJ **Timberland** writes "In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits."); *Edmond v. Tone Brothers,* 06A-UI-06958-ET (2006)(ALJ **Elder** writes "Under Iowa law, when a claimant resigns under those circumstances, it is considered to be a discharge rather than a voluntary leaving. Therefore, the administrative law judge finds the claimant was discharged from his employment."); *McGuire v. Bank of the West,* 07A-UI-00643-HT (2007)(ALJ **Hendricksmeyer** disqualifies claimant on misconduct theory because "The claimant may have submitted a resignation but under the provisions of the above Administrative Code section, this is not a voluntary quit because continuing work was not available to her. She would have been discharged if she had not resigned. Therefore the determination must be whether she was discharged for misconduct."). We have unanimously reached this same conclusion ourselves. *Kelly v. Council Bluffs Catholic School System*, 10B UI-07245 (2010); *Meeks v. Waterloo,* 11B UI-11311 (2011); Villarreal v. DFS Inc., 11B-UI-03210 (2011), http://decisions.iowaworkforce.org/ ui/ 2011/ 03210.EAB.pdf. Other jurisdictions concur with this approach. *E.g. Kane v. Women and Infants Hosp. of Rhode Island,* 592 A.2d 137 (R.I. 1991)("We conclude that the employee's forced resignation was not voluntary. Because she engaged in misconduct, she is ineligible for benefits…")*; Greenwood School Dist. v. Mdes*, 962 So.2d 684 (Miss. App., 2007); *Thomas v. Dist. of Col. Dept. of Labor*, 409 A.2d 164 (DC 1979); *Perkins v. Equal Opportunity Commission*, 451 N.W.2d 91, 93 (1990)(quit in lieu of discharge is not disqualify only if the employee "has engaged in no misconduct"); *Combs v. Board of Review*, 636 A.2d 122, 269 N.J.Super. 616 (N.J. Super. A.D. 1994).

This position is consistent with the literal meaning of the rule, and with the policy of the Employment Security Law. A careful reading of the rule establishes that where a Claimant is given the choice of quitting or being fired, this is not a voluntary quit. True it says, in the general provision that "the following are reasons for a claimant leaving employment with good cause attributable to the employer." This, in isolation, sounds like a forced quit is a quit for good cause. But the specific rule says "this shall not be

considered a voluntary leaving." We agree. It's just not a voluntary quit. So it certainly is not disqualifying *as a voluntary quit.* But this does not mean it cannot be disqualifying as a discharge. Indeed, the rules state that "[a] discharge is a termination of employment initiated by the employer." 871 IAC 24.1(113). This case matches this definition, and even if the quit is treated as involuntary, because forced by the Employer, the case would still be analyzed as a discharge under the literal terms of the rules. Thus, if misconduct is proven, disqualification results.

Policy, too, supports this approach. When analyzing this case as a discharge we ask whether misconduct is proven, and if so we deny benefits. We would not automatically grant benefits because the discharge took the form of a forced resignation. Iowa's Employment Security Law provides that it is to be interpreted "for the benefit of persons unemployed through no fault of their own." Iowa Code §96.2 (2009). An employee who commits misconduct is not unemployed through no fault of her own. And this is so, whether she is fired outright or given a choice to resign first. We just cannot see how the policy behind the Employment Security Law should be any different for a claimant who commits misconduct and is fired, than it is for a claimant who commits misconduct and is given a choice to quit before being fired. Indeed, why would a Claimant who choses "quit" get benefits but the exact same person would not get benefits if they chose "fired?" Frankly, the approach we take strikes us as the only one that makes any sense in terms of the purposes of the law.

So even treating the case as a quit in lieu of discharge, and thus an involuntary separation, we still will disqualify if the Employer can prove misconduct. For the reasons stated by the Administrative Law Judge, we find misconduct was so proven and that the Claimant was properly disqualified. *E.g. White v EAB*, 448 N.W.2d 691 (Iowa App. 1989)(lie to employer investigating a medication error was misconduct).

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Kim D. Schmett

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RRA/fnv Ashley R. Koopmans