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

BRUCE A SMITH	:	
	:	**HEARING NUMBER:** 15B-UI-11084
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
	:	
CLARION PACKAGING LLC	:	
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 Employer appealed this case to the Employment Appeal Board. The 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, Bruce Smith, worked for Clarion Packaging, LLC, as a full-time laborer from September 21, 2012 through August 18, 2015; working two weeks on the night shift, then two weeks on the day shift. (5:24-6:50; 15:31-16:17; 18:25-18:39) The Employer has an attendance policy that operates on a point system. The Claimant had a history of tardiness that resulted in his receiving a warning.

On August 1, 2015, the Claimant was tardy by several hours due to having an ear infection that prevented him from hearing his alarm go off. (13:32-13:50; 19:00-19:10) He was subsequently suspended for two weeks beginning August 5, 2015 through the 15th. (8:06-8:18; 8:35-8:39; 8:40-9:57; 11:00-11:15; 21:41-21:53; 24:08-24:14; 27:05-27:14) After his suspension, he returned to work on time August 18th and 19th. (16:09-19:13-19:25; 22:00-22:09; 23:40-23:46 27:27-27:34) While at work, he and Larry got into a heated exchange about his previous attendance. (31:08-31:27) The Claimant did not return to work because he

thought he was terminated when Larry told him not to come back if he was going to continue being tardy. (14:12-14:20; 16:32-16:37; 28:00-28:17) Mr. Smith had not yet maxed out on his attendance points (16:22; 16:32-16:37; 22:08-22:17; 24:30-24:50), and he did not check with Human Resources about his employment status. (29:43-29:49) The Employer denied terminating the Claimant, and Larry did not have the authority to terminate anyone. (16:46-16:52; 21:20-21:25; 32:57)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) (2013) 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. There is no dispute the Claimant had excessive tardiness for which he was disciplined. However, we note that upon his return to work, he had no additional tardies on the two days he worked, and therefore accumulated no additional points that could have subjected him to termination. Although the Claimant argues that Larry terminated him, he offered no corroborating evidence to substantiate his allegation. Not only does the Employer deny he was terminated, it would make no sense for the Employer to punish an employee who returned to work in full compliance with its attendance policy (reporting to work on time) and having worked beyond a full shift on the 19th (12 hours). Rather, it is more probable than not that Larry, who had no authority to terminate in the first place, commented on the heels of a heated discussion of what was to come should the Claimant continue being tardy as he had done in the past. It was not reasonable for Mr. Smith, without further inquiry, to assume he was fired.

The court in *LaGrange v. Iowa Department Job Service*, June 26, 1984, Iowa Court of Appeals Unpublished Case No. 4-209/83-1081 held that an employee who quits based on his mistaken belief that he will be terminated is deemed a voluntary quit without good cause attributable to the employer when the employer has taken no action to sever his employment.

In *LaGrange*, the employee was sent to an alcohol abuse counselor and ordered to take antabuse, a drug which makes it impossible to drink alcohol. The employee told his counselor that he planned on not taking the medication during the weekends so that he could drink. The counselor spoke to the employer about this

and then relayed to the employee that his plan was unacceptable to the employer. After this the employee was at a bar where his boss was present. He bought himself a beer and one for his boss and then drank his beer. The employer did not tell the employee that he was terminated but the employee assumed that he was. The Court of Appeals ruled that the fact that the employee was mistaken about whether he would be terminated did not negate the fact that he had voluntarily quit. *LaGrange* slip op. at 5.

This case is on point with the case at hand. Just because Larry may have told the Claimant he could be terminated ***if*** he accumulated additional points (which he had not yet accumulated), does not translate into "Bruce, you're fired!" Additionally, Larry had no such authority to sever the Claimant's employment relationship with Clarion Packaging. Based on this record, we conclude that it was the Claimant who severed his own relationship with the Employer, which is a voluntary quit by its legal definition. The burden of proof is on him to prove that his quit was with good cause attributable to the Employer, which he has failed to establish.

DECISION:

The administrative law judge's decision dated October 20, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying reasons. Accordingly, he is denied benefits until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

The Employer submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

Lastly, the Employer has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED.**

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv