

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RUSSELL J JOHNSON Claimant STANDARD READY MIX CONCRETE LLC Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO. 07A-UI-00199-SW</div> <div>ORDER</div> <div>OC: 11/27/05 R: 01</div>
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871 IAC 26.11 – Decision on Motion

An unemployment insurance decision was issued on December 14, 2006, that granted benefits to the claimant effective November 12, 2006. The employer filed a timely appeal of that decision on December 19, 2006. The basis of the appeal was that the claimant had been discharged for work-connected misconduct on November 29, 2006.

An in-person appeal hearing was scheduled for September 12, 2007, in this case on the claimant's qualification for unemployment insurance benefits based on the reasons for his separation from work. On August 24, 2007, the claimant's attorney, Maynard Weinberg, filed a motion to refer the case back to the Unemployment Insurance Division for a determination of a constructive discharge/voluntary quit with good cause issue or alternatively discovery time. The hearing was postponed until the week of January 15, 2008, based on the agreement of both parties. On September 4, 2007, the employer's attorney, Chad Richter, filed a response to Weinberg's request asking that the referral request be denied.

After considering the arguments of the parties, the file in this case, and the law, the motion to refer this case to Unemployment Insurance Division is denied based on the following reasons.

An unemployment insurance appeal hearing is a de novo proceeding. The administrative law judge is not acting as a reviewing body to decide if the information presented at the fact-finding interview supports the representative's determination. Parties are not barred from presenting evidence or arguments not presented to the representative in an appeal hearing. In a case involving a claimant's separation from work, the unemployment insurance division's characterization on the nature of the separation is not binding on the administrative law judge. Often the primary issue in the separation case is whether the separation was a quit or a discharge. Many times even the parties are uncertain as to whether the separation was a quit or discharge because not all separations fall neatly into one category or another.

Therefore, in appeals hearings involving a separation from work both the issue of whether the claimant was discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer are generally included on the hearing notice to advise the parties of these potential issues. The unemployment insurance rules authorize this procedure: "Notwithstanding, voluntary quits and discharges generally shall be construed to constitute the single issue of separation from employment so that evidence of either or both types of separation may be received in a single hearing." 871 IAC 24.14(4). The Iowa Supreme

Court also has approved this procedure. Freeland v. Employment Appeal Bd., 492 N.W.2d 193, 196 (Iowa, 1992) (claimant received due process notice of the issue of whether she was discharged for misconduct where the notice advised her of the law's disqualification provisions for discharges for misconduct and voluntary quits without good cause attributable to the employer and the administrative law judge advised her that both issues would be considered).

The claimant's request, therefore, is based on the mistaken notion that he will somehow be foreclosed in the upcoming appeal hearing from presenting evidence that the claimant is qualified to receive unemployment insurance benefits under a theory of constructive discharge/voluntary quit with good cause issue unless the unemployment insurance division representative has received information and has made a determination on that issue. This is not the case. Likewise, the employer's argument at this stage that there is no factual issue on the constructive discharge/voluntary quit with good cause issue is misplaced. The purpose of a contested case hearing regarding a separation from employment is to determine the facts based on the evidence presented, hear arguments from the parties regarding what the facts prove and the legal conclusions that flow from those facts, and enter findings and conclusions on what the administrative law judge determines to be the relevant.

In regard to the discovery time request, the hearing has already been postponed and discovery is available to both sides under 871 IAC 26.9.

IT IS ORDERED that (1) The motion to refer this case to Unemployment Insurance Division is denied, and (2) discovery is available to both sides under 871 IAC 26.9.

Steven A. Wise
Administrative Law Judge

Order Dated and Mailed

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