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

JOSEPH MOORE	: : :
Claimant	: HEARING NUMBER: 20B-UI-04367
and	EMPLOYMENT APPEAL BOARD
ADVANCED WALL SYSTEMS	:
Employer	

# 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: 96.5-2-A, 96.3-7

# DECISION

## **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, Joseph Moore, worked for Advanced Wall Systems as a part-time laborer from January 3, 2020 until April 7, 2020. The Claimant's primary duties consisted of assisting in the mounting of drywall, i.e., cleanup, carry equipment, etc. His immediate supervisor was Dennis Anderson. On April 7, 2020, the Employer directed the Claimant to redo a job. The Claimant had incompletely sanded the ceiling at a residential job. In response to the Employer's directive, the Claimant started complaining, repeatedly, using the 'f-word'. The Employer asked him to stop using the profanity, and to 'keep it down', as the homeowners were in the basement. The Claimant persisted in using profanity to which the Employer placed his hand on him and repeated his directive. The Claimant responded that his gesture was a physical assault and called the police. Upset, the Claimant walked outside and waited. The Employer did not terminate the Claimant. The police arrived and took each parties' statement; the Employer was inside the home while the Claimant was outside. The Employer denied any physical assault, and the police found nothing to show an assault occurred. The police asked the Employer what the Claimant had to do to get his job back. The Employer told the officer all the Claimant needed to do was to contact him. The Employer did not hear from the Claimant and assumed he quit. The Employer never received a police report or any other correspondence regarding the matter.

The Employer did not participate in the initial fact-finding interview by telephone.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(1) 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...

(27) The claimant left rather than perform the assigned work as instructed.

(28) The claimant left after being reprimanded.

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. Here, the Claimant was clearly upset he was asked to complete a task that he initially did not perform properly. The Claimant's verbal response, in particular his use of profanity, corroborated his distaste for being redirected. The Employer's placing his hand on the Claimant was merely an attempt to gain his attention to prevent the customer from overhearing the Claimant's unprofessional comments. The Employer has a right to expect civility and professionalism from its employees. The Claimant's response to being touched was an overreaction to the situation, as evidenced by the fact the police officer, after taking statements from both parties, simply asked how the Claimant could come back. There is no evidence in the record to support the Employer terminated the Claimant, or ever issued any prior warnings to the Claimant. When the Claimant failed to stay at the worksite, or contact the Employer about his job, the Employer reasonably believed his quit. Based on this record, we conclude the Claimant voluntarily quit without good cause attributable to the Employer.

## **DECISION:**

The administrative law judge's decision dated June 23, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant voluntarily quit without good cause attributable to the Employer. Accordingly, he is denied benefits until such time he has worked in and was paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(1)"g".

Ashley R. Koopmans

James M. Strohman

AMG/fnv

Myron R. Linn