

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ARLIN D SCHAGER
Claimant

APPEAL NO. 11A-UI-05808-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MUELLER CONCRETE CONST CO
Employer

OC: 01/23/11
Claimant: Respondent (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6 – Aggrieved Party Requirement
Iowa Code Section 96.6(3)(b) – Appeals

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 28, 2011, reference 03, decision that allowed benefits effective March 6, 2011, provided the claimant was otherwise eligible for benefits. A hearing before an administrative law judge was set for May 25, 2011, and the parties were properly notified. Upon review of the administrative file, the administrative law judge concludes that the hearing set for May 25, 2011 is neither necessary nor appropriate.

ISSUE:

Whether the administrative law judge has jurisdiction to hear the employer's appeal from a decision entered by another administrative law judge in Appeal Number 11A-UI-02974-AT that concluded there had been no separation in July 2010 and that allowed benefits for the period of January 23, 2011 through March 6, 2011. The undersigned administrative law judge does not have such jurisdiction.

Whether the employer is an aggrieved party for purposes of the April 28, 2011, reference 03 decision that allowed benefits to the claimant *and that relieved the employer of liability for benefits* so long as the claimant continued to be employed with the same employer, in the same way, as before he filed his claim for benefits. The administrative law judge concludes that the employer is not an aggrieved party for purposes of that particular decision.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer filed a timely appeal from the April 28, 2011, reference 03 decision that allowed benefits effective March 6, 2011 and that relieved the employer of liability for benefits so long as the claimant continued to be employed with the same employer, in the same way, as before he filed his claim for benefits. That same decision directed the employer to immediately contact Iowa Workforce Development in the event that the claimant subsequently separated from the employer so that the separation issue may be investigated and so that future payments are correctly paid and charged.

The April 28, 2011, reference 03 decision flowed from an administrative law judge remand in Appeal Number 11A-UI-02974-AT. On April 1, 2011, Administrative Law Judge Dan Anderson had entered a decision that reversed a March 4, 2011, reference 02 decision. In the reference 02 decision an Iowa Workforce Development Claims Division deputy had denied benefits based on the conclusion that the claimant, Arlin Schager, had voluntarily quit without good cause attributable to the employer on July 28, 2010. In the April 1, 2011 appeal decision, Judge Anderson rejected and reversed the lower ruling. Judge Anderson concluded that there had been no separation from the employment. Judge Anderson ruled that Mr. Schager had been on an informal leave of absence from June 2010 until January 20, 2011. Judge Anderson concluded that Mr. Schager was eligible for benefits for the period of January 23 through March 6, 2011, based on the conclusion that Mr. Schager was able to work and available for work during that period. Judge Anderson left for the Claims Division the issue of whether Mr. Schager was eligible for benefits from March 7, 2011 onward.

REASONING AND CONCLUSIONS OF LAW:

The employer seeks through its appeal of the April 28, 2011, reference 03, decision to further challenge Judge Anderson's April 1, 2011 ruling in Appeal Number 11A-UI-02974-AT. The undersigned administrative law judge would have no jurisdiction or authority to hear an appeal from another administrative law judge's decision. Instead, the employer's appeal of the April 1, 2011 ruling in Appeal Number 11A-UI-02974-AT would have to be addressed by the Employment Appeal Board. See Iowa Code section 96.6(3)(b), which states as follows:

b. Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

The administrative law judge notes that the Employment Appeal Board has docketed the employer's appeal from April 1, 2011 decision in Appeal Number 11A-UI-02974-AT and that the employer's appeal is now pending before that body.

The appeal rights and procedures set forth at Iowa Code section 96.6 presuppose and require the existence of an aggrieved party. While the employer *is* an aggrieved party for purposes of appealing from Judge Anderson's April 1, 2011 decision in Appeal Number 11A-UI-02974-AT, the employer *is not* an aggrieved party for purposes of the April 28, 2011, reference 03 decision that both allowed benefits *and conditionally relieved the employer of liability*. The employer is not an aggrieved party for purposes of the April 28, 2011, reference 03 decision because the employer received in that decision the full remedy available under the law *for the issue being decided in that decision*.

The employer's appeal from the April 28, 2011, reference 03 decision is hereby dismissed. The administrative law judge will leave to the Employment Appeal Board the decision regarding whether further remand to the Claims Division to address the separation is appropriate.

DECISION:

The Agency representative's April 28, 2011, reference 03 is affirmed because the employer is not an aggrieved party *for purposes of that decision*. The employer's appeal from the decision in Appeal Number 11A-UI-02974-AT is pending before the Employment Appeal Board, which holds exclusive jurisdiction in that matter at this time.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs