

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

RUSSELL J JOHNSON

Claimant,

and

STANDARD READY MIX CONCRETE
LLC

Employer.

HEARING NUMBER: 08B-UI-00199

EMPLOYMENT APPEAL BOARD
DECISION

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: 96.5-1

DECISION

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds 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**.

The Board has two clarifications of its conclusion to adopt the decision of the Administrative Law Judge in this matter. First, only the Claimant appealed so the only issue for our review is that aspect of the decision that arguably aggrieved the Claimant. We do not review the decision to grant benefits following October 21, 2006 since no one appealed that decision. At issue, then, is only the decision to deny benefits from October 15 through 21, 2006. Since we agree with the Administrative Law Judge's resolution of that issue we adopt his decision today. Second, on page 6 and 7 of his decision the Administrative Law Judge discusses the doctrine of issue preclusion. The opinion suggests that since the Claimant was a member of the same union as the claimants in 00198 and since the attorney involved is the same then the

decision in 00198 is binding in some way in this case. We do not find 00198 to be binding as the Claimant did not have an identity of interest with the claimants in 00198. See generally Taylor v. Sturgell, 553 U.S. ____ (June 12, 2008)(Discussing doctrine and holding identical FOIA suit by acquaintance of first requester not barred). Instead we find the reasoning in 00198 persuasive, that is, that for the week in question the Claimant was unemployed due to a stoppage of work that existed due to a labor dispute. This being the case the Claimant is disqualified for that week under Iowa Code §96.5(4). We reach this decision, however, only based on the record in this case and in accord with the analysis as set out by Administrative Law Judge Wise.

John A. Peno

Elizabeth L. Seiser

Monique Kuester

RRA/fnv