

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANE BRINK**  
Claimant

**APPEAL NO. 06A-UI-09967-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY CONCRETE CO INC**  
Employer

**OC: 01/08/06 R: 04  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Shane Brink (claimant) appealed an unemployment insurance decision dated October 6, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Kelly Concrete Company, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2006. The claimant participated in the hearing. The employer witnesses were not available at either number provided for the hearing, and therefore, did not participate. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time laborer from August 1, 2006 through September 8, 2006, when he voluntarily quit his employment. He had worked for Pelling for the previous three years making \$14.20 per hour. The claimant was told by Mike Brannan that if he began working for the employer, he would start at \$15.00 per hour and after three weeks would make \$19.50, which is the laborer scale. Relying on that offer, the claimant left his job with Pelling and started with the employer. There was no raise after three weeks, so the claimant worked an additional three weeks and still received no raise. He spoke with the employer about what he was promised and was told he had to work three months before receiving a raise and then he would only receive \$17.50. The claimant decided to quit since that was not what he was promised before accepting the position.

The employer's assistant subsequently contacted the Appeals Section on October 25, 2006, at 9:27 a.m. The record closed at 9:09 a.m. The employer had provided a telephone number which the administrative law judge called at the scheduled start time of the hearing. The

employer's assistant advised the two witnesses were at a different number so the administrative law judge called the second number. The witnesses were not available and the call went into voice mail so a message was left for the witnesses providing the Appeals Section telephone number. The employer's assistant requested that the record be reopened.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied. If a party responds to a hearing notice after the record has been closed, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The request to reopen the record is denied because the party making the request failed to participate by not being available at either telephone number provided to the Appeals Section.

The next issue to be determined is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry it out by telling the employer he quit because he was not paid what he had been promised.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He has satisfied that burden and benefits are allowed.

The employer is not a base period employer and its account is not subject to any charges during the claimant's current benefit year. If the claimant establishes a subsequent benefit year, the wage credits he earned from August 1, 2006 through September 8, 2006, would be subject to charge, since the employer discharged him for non-disqualifying reasons.

**DECISION:**

The unemployment insurance decision dated October 6, 2006, reference 01, is reversed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw