

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building, 4<sup>TH</sup> Floor  
Des Moines, Iowa 50319  
eab.iowa.gov**

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**FABIAN E CARTAGENA ALAS**

Claimant

: **APPEAL NUMBER:** 22B-UI-11355  
: **ALJ HEARING NUMBER:** 22A-UI-11355

and

:  
: **EMPLOYMENT APPEAL BOARD  
DECISION**

**DEVRIES PROPERTY MGMT LLC**

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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:** 96.5-1

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Employer 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 WITH NO ADVERSE EFFECT ON THE PARTIES** as set forth below.

The Board adopts the Administrative Law Judge's findings of Fact with the following addition: After his layoff the Claimant did obtain work and earn covered wages at AMP Construction & Landscaping, and this is why he quit Devries Property Management.

**REASONING AND CONCLUSION OF LAW:**

Official Notice: Iowa Code section 17A.14 provides:

Rules of evidence -- official notice.

In contested cases: ...

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

Under the rules of court the matters of which judicial notice may be taken are:

Rule 5.201 Judicial notice of adjudicative facts.

a. Scope of rule. This rule governs only judicial notice of adjudicative facts.

b. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Iowa Rule of Evidence 5.201. The agency is also allowed to rely on “[t]he agency’s experience, technical competence, and specialized knowledge...” when evaluating the evidence. Iowa Code §17A.14(5). Taking notice on appeal is not unusual. I. R. Evid. 5.201(f)(“Judicial notice may be taken at any stage of the proceeding.”)

We have consulted the Iowa Workforce employer database in order to confirm that the Claimant did earn wages at the new job. We have taken notice of IWD’s own database because it is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,” and fairness to the parties does not require an opportunity to contest this information. In particular we are using this information to benefit the Claimant **and the Employer will not be charged as a result of our decision today.**

*Quit Analysis:* Iowa Code Section 96.5(1) states:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Even where a claimant quits but without good cause attributable to the employer the claimant may nevertheless collect benefits under certain circumstances. One of these is where the quit is for the purpose of accepting other employment. On this issue the Code provides:

a. The individual left employment in good faith for the sole purpose of accepting **other** or better **employment**, which the individual did accept, and the individual performed services in the new employment. **Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund.** This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code §96.5(1)(a). The rules of Workforce further explain:

The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self employment.

871 IAC 24.28(5).

As found by the Administrative Law Judge the Claimant did quit to start at another employer. The agency records show he did earn wages at the new job which he quit to take. This being the case the Claimant is **not** disqualified under Iowa Code §96.5(1)(a), as the Administrative Law Judge correctly found.

**But**, since Devries Property Management was the employer whom the Claimant quit in order to take another job under the law **Devries Property Management's account may not be charged** with benefits paid to the Claimant. Iowa Code §96.5(1)(a); 871 IAC 23.43(5)(no charge to prior employer when quit for other or better job).

We note that the Claimant has requalified following his March 25, 2022 separation from Devries, and that he has not filed a claim for benefits since the week ending April 2, 2022. The Claimant was paid only one week of benefits between the time of the DeVries separation on March 25, 2022 and his requalification.

#### **DECISION:**

The administrative law judge's decision dated September 22, 2022 is **REVERSED** although the Employer is also relieved of charges. The Employment Appeal Board concludes that the Claimant quit. The Claimant's quit, however, was not disqualifying. Accordingly, the Claimant **is allowed benefits provided** the Claimant is otherwise eligible.

**Benefits relating to wage credits earned with Devries Property Management shall be charged to the unemployment compensation balancing fund under the authority of Iowa Code §96.5(1)(a).**

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

RRA/fnv