

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

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**BRENTON A BURGER**

Claimant

and

**JOHNSON COUNTY**

Employer

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**HEARING NUMBER: 15B-UI-06472**

**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**

**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, Brenton A. Burger, was employed by Johnson County from March 16, 2015 through April 28, 2015 as a full-time temporary maintenance worker. All personnel receive safety training via manuals and videos, particularly as it relates to operating and working around the skid loader. (1:05:30-1:5:45-1:06:44; 1:07:35) During the initial four weeks of his employment, the Employer received numerous reports regarding the Claimant's performance and his ability to learn from his mistakes. (1:36:06-1:36:32)

On April 23, 2015, the Claimant took a cell phone video of Terry Kinney (field worker with over 10 years' experience), whom the Claimant believed had unsafe work habits. (55:28-55:58; 57:20-58:13) He then took a picture of Kinney not wearing his safety gear. (54:25; 55:59-56:16) Later that same day, Mr. Burger witnessed an incident while working on a crew that was removing a large tree, cutting it into smaller pieces, and loading it. (1:00:15-1:00:30) The Claimant had no responsibility for taking down the tree; only clean up procedures. (1:02:50-1:03:05) A large piece of limb was stuck in another tree wherein Kinney used the

Bobcat machine to push down the limb. (24:41-24:54; 1:00:48-1:01:03) The brush end of the hanging limb fell close to Leon Lintz (seasonal park worker with over 10 years' experience) who was in the vicinity, but was unharmed. (50:00-50:12; 1:01:29-1:01:39; 1:04:11-1:04:31; 1:21:11-1:22:07) Mr. Burger approached Lintz expressing concern, but Lintz told him to "...it was no big deal..." (1:24:08-1:24:48) Lintz had received proper training for working around the skid loader, and understood the protocol. (1:18:10-1:19:32) He did not at any point believe he was in physical danger. (1:31:16-1:31:29; 1:39:29) Kinney had cautioned both men to stand farther back from the skid loader, which was in accordance to their safety training, as he couldn't see several feet behind the skid loader while he was operating it. (1:04:55-1:05:25; 1:23:43-1:23:53)

The Claimant reported the incident to Wade Shultz, (operations manager and also the Claimant's immediate supervisor) who was making his rounds at the worksite. (53:58-54:10; 58:23; 58:38-58:51; 1:33:45-1:34:06; 1:34:27; 1:37:03-1:37:25) Shultz received a phone call as Burger completed his complaint. (1:37:38-1:38:05) After the supervisor finished his call, Shultz told the Claimant he would investigate the matter and get back to him. (1:38:12-1:38:20) Shultz's investigation yielded no concerns from any other parties involved in the Claimant's report. (1:38:25-1:38:38; 1:38:56-1:39:05; 2:09:14-2:09:30; Exhibits 2-4) Shultz explained the results of his investigation to Burger. (1:39:41-1:39:54) Burger also contacted Larry Gullett (Conservation Director) about the incident. (2:31:37-2:35:26)

On April 24, 2015, Shultz issued a written warning to Burger for taking an inappropriate video at the workplace the day before as well as addressed several other complaints, including "...[his] scuffing the road multiple times with equipment after being told to raise boom on machine..." (26:15-27:40; 1:40:08-1:40:33; Exhibit 1) The Employer advised the Claimant that he needed to improve his attitude. (1:51:29-1:51:44) Burger refused to sign the document (1:40:57-1:41:00) and became upset with the Employer for not continuing to address the 'tree incident' from the day before. (1:41:29-1:41:54) The Claimant wanted the Employer to reprimand Kinney, which the Employer did not do because the investigation, at that point, yielded no need to do so. (1:42:22-1:42:28; 1:42:49-1:43:10; 2:09:44) Burger then requested to be moved to another crew, which the Employer said he would try (1:59:35-1:59:46), but was unable to promise to do so immediately because he was short-staffed. (1:44:16-1:45:00; 1:53:20-1:54:15)

The Employer expected Mr. Burger to report to work as usual the following Monday, and meet again at the end of that week to discuss any improvements. (1:45:58-1:46:30) In the meantime, Mr. Burger contacted the Human Resources Department at the end of the day on the 24<sup>th</sup>, and left a voicemail. (2:03:32-2:04:00) On Monday morning (April 27<sup>th</sup>), the Claimant met with Lori Shramek in the Human Resources office to voice his concerns to which she indicated she would investigate, and advised him to return to work. (2:04:12-2:04:44; 2:15:00-2:15:06; 2:21:00-2:21:15) On Tuesday, April 28, 2015, the Claimant reported to the office, turned in his keys, and quit before the investigation concluded. (1:46:49-1:47:04; 1:47:49-1:47:52; 1:54:23; 2:25:59-2:26:51; Exhibit 6) Continued work was available had the Claimant not quit his employment. (1:58:40-1:58:46)

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

Iowa Code section 96.5(1) (2015) 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...

(22) The claimant left because of a personality conflict with the supervisor.

(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. It is clear from the record that the Claimant quit after being reprimanded, when he believed that it should have been Kinney who should have received the reprimand as a result of his complaint. The Employer provided an abundance of evidence to show that in direct response to Burger's complaint, his immediate supervisor investigated the matter, as well as HR was conducting its own investigation which had not yet come to fruition as of the day he decided to quit. However, Shultz's preliminary investigation, i.e., statements from witnesses involved in the alleged incident, found there was no immediate safety concern.

We find that the Employer's action was appropriate and reasonable in response to Burger's complaint. Just because the Employer's response hadn't thus far led to the Claimant's desired conclusion does not render the Employer's response as 'unconcerned or indifferent' to his safety concerns; nor does it prove that the workplace was unsafe. The Claimant admitted that had the Employer shown concern and perhaps apologized to Mr. Lintz, the Claimant 'absolutely' would not have quit. (48:42-50:00) Whether the Employer 'showed remorse or not' should have no bearing on whether or not the work environment was safe. Since the Claimant's decision to remain employed turned on the Employer's response, by his own admission, then it reasonably follows that the situation must not have been unsafe such that we can conclude that the work environment was detrimental and intolerable for him to stay there.

Rather, evidence supports that the Claimant quit after receiving a written reprimand solely about his attitude performance. The fact that Burger video-taped and photographed Kinney makes it more probative than not that he had a conflict with the way Kinney directed the crew. His dislike for Kinney's methods does not make his work environment unsafe. Based on Kinney's and Lintz' testimony, which we find credible, the men followed safety protocol on April 23<sup>rd</sup> as they had been trained, and based on their combined years of experience.

For the foregoing reasons, we conclude that the Claimant failed to satisfy his burden of proving that his quit was with good cause attributable to the Employer.

**DECISION:**

The administrative law judge's decision dated August 11, 2015 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".

The Employer submitted a request to present new and additional evidence to the Employment Appeal Board. The evidence was not contained in the administrative file and was not presented to the administrative law judge. The application is denied because good cause was not established for not presenting the evidence earlier. See 486 IAC 3.1(8).

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv