

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS N KEITH**  
Claimant

**APPEAL NO. 11A-UI-00211-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY CONCRETE COMPANY INC**  
**KELLY CONCRETE**  
Employer

**OC: 12-05-10**  
**Claimant: Respondent (2)**

871 IAC 24.19(1) – Determination and Review of Benefit Rights  
871 IAC 24.28(6-8) – Prior Adjudication

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 28, 2010 (reference 01) decision that allowed benefits based upon a decision in a prior benefit year for the same separation. After due notice was issued, a hearing was held by telephone conference call on February 16, 2011. The claimant did participate. The employer did participate through (representative) Chad Kelly, owner; Amber Koppenhaver, office manager; Colby Koppenhaver, flat crew supervisor; and Danny Jordan, truck driver.

**ISSUE:**

The issue is whether the separation was adjudicated in a prior claim year.

**FINDINGS OF FACT:**

The separation issue presented was resolved in a prior claim year (original claim date December 6, 2009) as the representative's decision dated December 27, 2010 (reference 03). The employer's timely appeal from that decision has been reversed (11A-UI-00210-H2T).

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the separation at issue has been adjudicated in a prior claim year and that decision has been reversed. Accordingly, this decision is also reversed.

871 IAC 24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made

on a prior claim by a representative of the department and such decision has become final.

871IAC 24.19(1) provides:

Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. . . . The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any other such party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

The separation issue presented was resolved in a prior claim year (original claim date December 6 2009) as the representative's decision dated December 27, 2010 (reference 03). The employer's appeal from that decision has been reversed (11A-UI-00210-H2T). The current decision, referring to the prior claim year decision on the same separation date, is reversed.

**DECISION:**

The December 28, 2010 (reference 01) decision is reversed, since the prior decision on the separation has been reversed. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw