

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JEREMY A BERSTLER
518 VANDERBILT ST
FAIRFAX IA 52228

BANES CONSTRUCTION INC
4905 LONGVIEW DR
FAIRFAX IA 52228-9770

Appeal Number: 05A-UI-06271-CT
OC: 05/15/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jeremy Berstler filed an appeal from a representative's decision dated June 6, 2005, reference 01, which denied benefits based on his separation from Banes Construction, Inc. After due notice was issued, a hearing was held by telephone on July 5, 2005. Mr. Berstler participated personally. The employer participated by John Banes, Owner, and Jerry Means, Shop Foreman.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Berstler was employed by Banes Construction, Inc. from July 1, 2003 until April 25, 2005. He worked full time in the shop. He was scheduled to be at work at 9:00 a.m. on April 21. He did not report for work until approximately 10:15 a.m. He did not call to report that he would be late. When questioned, he told Mr. Means that he had decided to sleep in. Mr. Means told him he would have to go home for the day. At that point, Mr. Berstler began yelling at Mr. Means, saying that he did not have to follow Mr. Means' rules. He also told Mr. Means to shut his "a-hole."

Mr. Berstler did not work on April 22 as he had previously been granted the day off. When he came to work on April 25, he was told by John Banes that he would have to apologize to Mr. Means or he would not have employment. Mr. Berstler refused to apologize and, therefore, became separated from the employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Berstler was separated from employment for any disqualifying reason. He knew he would be allowed to continue in the employment if he apologized to Mr. Means for his conduct of April 21. The apology was not unwarranted given his insubordinate conduct towards Mr. Means. The apology would indicate to the employer that Mr. Berstler was willing to accept Mr. Means' supervisory authority. By refusing to apologize, Mr. Berstler caused his own unemployment. Because he left the employment rather than apologize, the separation is considered a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any cause attributable to the employer for the quit. As stated above, the apology the employer was requesting was not unreasonable given Mr. Berstler's insubordination of April 21. Therefore, the required apology did not constitute good cause attributable to the employer for quitting. Inasmuch as the evidence does not establish any cause attributable to the employer for quitting, benefits are denied.

Even if the administrative law judge were to conclude that Mr. Berstler was discharged rather than quit, he still would not be entitled to job insurance benefits. His insubordinate conduct towards Mr. Means on April 21 constituted a substantial disregard of the standards the employer had the right to expect. Such conduct constitutes disqualifying misconduct within the meaning of the law.

DECISION:

The representative's decision dated June 6, 2005, reference 01, is hereby affirmed. Mr. Berstler quit his employment for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/pjs