



CHARLES A. KRUGEL



Date Mailed: 06/30/2015  
Employer Account Number: [REDACTED]  
Claimant SSN: [REDACTED]  
Docket Number: 1502319  
Appeal Filed Date: 03/20/2015

### Board of Review Decision

(Este es un documento importante. Si usted necesita un intérprete, póngase en contacto con el Centro de Servicio al Reclamante al (800) 244-5631)

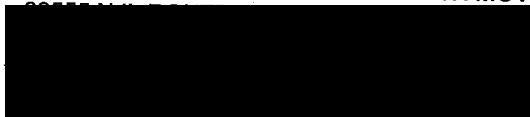
**Claimant**

BRIAN K. WINTERS



**Employer Appellant**

AMS EARTH MOVERS LLC AMS EARTH MOVERS LLC



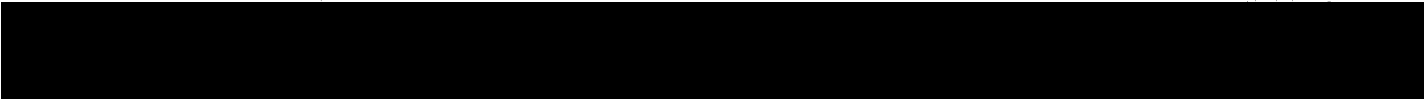
Type of Appeal: Voluntary leaving and Misconduct

Issue	Benefit Period
601A	11/30/2014 to 12/31/9999
602A	11/30/2014 to 12/31/9999

This is an appeal by the employer from a Referee's decision dated 02/23/2015, which modified the claims adjudicator's determination and held that 820 ILCS 405/601A is not applicable. Pursuant to 820 ILCS 405/602A, the claimant is eligible for benefits, as to this issue only, from 11/30/2014. The employer is a party to these proceedings.

We have reviewed the record of the evidence in this matter, including the transcript of the testimony submitted at the hearing conducted by telephone on 02/20/2015, at which the claimant and employer appeared and testified. We have considered written arguments by the employer in connection with this appeal. The record adequately sets forth the evidence so that no further evidentiary proceedings are deemed necessary.

The claimant was employed as a heavy equipment operator and business operations manager for more than two years. He and the employer's president, [REDACTED], met on Wednesday, November 26, 2014. Their conversation took place about thirty minutes before the claimant's shift ended. In it, the employer reprimanded the claimant for allowing his wife, another employee of the company, to ride in the company truck the previous Saturday, when she got out of the truck onto a client's construction site without wearing proper safety wear. The claimant did not like being reprimanded in this way, and was also upset because he had a mistaken belief that it was a union holiday, which would entitle him to double time pay. He decided to leave and told the president that he quit. The claimant further stated that he was bringing the police back with him so he could get his stuff. He did not ask for permission to leave before his shift ended.



[REDACTED] He did not return to work with the employer after that meeting.

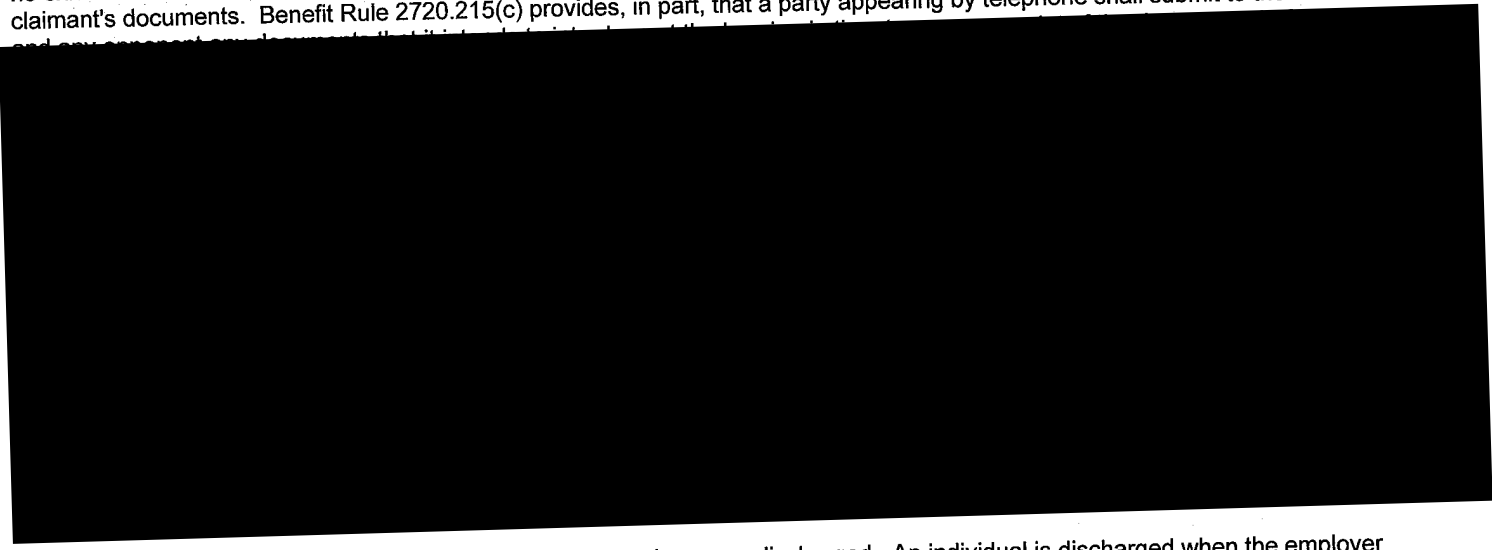
820 ILCS 405/601A provides that an individual shall be ineligible for benefits for the weeks in which he has left work voluntarily without good cause attributable to the employing unit and, thereafter, until he has become reemployed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks.

820 ILCS 405/602A provides that an individual shall be ineligible for benefits for the weeks in which he has been discharged for



misconduct connected with his work and, thereafter, until he has become re-employed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks. The term "misconduct" means the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit.

On appeal, the employer argues that the Referee improperly admitted documents from the claimant that the employer received at 12:47 p.m. on February 19, 2015, fewer than twenty-four hours before the 11:30 a.m. scheduled time of the February 20, 2015 hearing. The record shows that the Referee did not enter any claimant or employer documents into the record as exhibits. Although no exhibits were entered during the hearing, we find that the Referee did not err when she overruled the employer's objection to the claimant's documents. Benefit Rule 2720.215(c) provides, in part, that a party appearing by telephone shall submit to the Referee



We now reach the question of whether the claimant quit work, or was discharged. An individual is discharged when the employer takes action that results in the unemployment and the worker does not have a choice or remaining in employment. An individual leaves work when he takes the action that results in his unemployment and he has a choice of remaining at work at the time he ceases working. Whether the claimant left work voluntarily or was discharged is determined from an examination of the intent of the parties as evidenced by their words and actions. The question of intent is to be determined from the totality of the evidence presented. See Dunn v. Dir., D. Of Labor, Bur. Of Emp. Security, 131 Ill.App.3d 171, 476 N.E.2d 77 (1st Dist. 1985) and Arroyo v. Doherty, 296 Ill.App.3d 839, 695 N.E.2d 1350 (1st Dist. 1998).

In the instant case, the claimant and employer give differing versions of events concerning the separation of the claimant. In an action under the Administrative Review Law, the hearing officer is the fact finder responsible for overseeing testimony, making credibility determinations and assigning weight to statements made by witnesses. See Emergency Treatment, S.C. v. Department of Employment Security, 394 Ill.App.3d 893, 917 N.E.2d 135 Ill.App. 1 Dist., 2009. However, ultimately, it is the Board's responsibility to weigh the evidence, evaluate the credibility of the witnesses and resolve conflicts in testimony. Caterpillar Inc. v. Doherty, 299 Ill. App. 3d 338, 344 (1998).

Both parties agree that the claimant stated that he quit before leaving work thirty minutes early on November 26, 2014. The claimant, however, contends that he qualified this statement by adding, "For the day," a contention the employer denied. They also agree that the claimant told the employer's president that he would be returning with police so he could get his stuff. We note that the claimant did not testify to making this statement until after the employer's witnesses testified, and he further testified he said he was bringing police to [REDACTED]. None of the employer's witnesses, though, stated that the claimant said where he was bringing police to get his things. The claimant also presented his union business agent, who was present at the meeting between the claimant and the employer on December 2, 2014, as a witness. He testified that the employer's president told him that the claimant quit, yet also said that she "terminated" the claimant.

Our review of the totality of the evidence leads us to the conclusion that the claimant quit work, and was not discharged. The claimant's actions and statements show that he was the moving party in his separation from work. He was upset about being reprimanded by the employer's president and by working on what he erroneously believed was a holiday, and walked off the job after telling the president that he quit. He added that he would bring police with him when he came back to get his belongings. The claimant maintained that he stated he was quitting only for that day, or, in other words, merely leaving work early, before the end of his shift. If so, the claimant's choice of words is curious, when he had only thirty minutes left on his shift. He did not say he was leaving, or that he was out of there. He did not say that he would see the employer on Monday. He said that he quit. He also maintained that he stated he was bringing police with him, and added to the president's house, but he did not offer any corroboration for that statement. As noted above, the claimant did not bring this up in his testimony until the employer's witnesses had already testified about this statement. For these reasons, we find that the claimant's testimony lacks credibility, supporting the conclusion

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that he quit. Accordingly, Section 601A of the Act is the correct issue in this appeal, and Section 602A does not apply.

We also find that the claimant did not have good cause for leaving work. The employer reprimanded him about an alleged policy violation, but he did not contend that he was in danger of being disciplined or that his job was in jeopardy as a result of the reprimand. The employer did not alter the terms or conditions of the claimant's employment so as to render the job unsuitable for him. The preponderance of the evidence establishes that the claimant voluntarily left work for reasons that were not attributable to the employer.

Pursuant to 820 ILCS 405/601A, the claimant is disqualified for benefits. The claimant is not eligible for benefits from 11/30/2014.

820 ILCS 405/602A is not applicable.

The decision of the Referee is MODIFIED.

**(Este es un aviso importante respecto a sus derechos a repasar por los cortes. Si no entiende, busque un intérprete.)**

Notice of rights for further review by the courts:

If you are aggrieved by this decision and want to appeal, you must file a complaint for administrative review and have summons issued in circuit court within 35 days from the mailing date, 06/30/2015.

You may only file your complaint in the circuit court of the county in which you reside or in which your principal place of business is located. If you neither reside nor have a place of business within Illinois, then you must file your complaint in the Circuit Court of Cook County.

Legal references:

Illinois Unemployment Insurance Act, 820 Illinois Compiled Statutes 405/1100  
Administrative Review Law, 735 Illinois Compiled Statutes 5/3-101 et seq.

TO: BRIAN K. WINTERS, Claimant

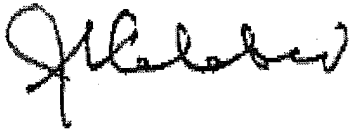
TO: AMS EARTH MOVERS LLC AMS EARTH MOVERS LLC, Employer

CC: CHARLES A. KRUGEL, Attorney Party:Employer

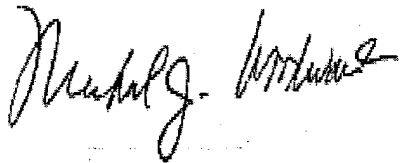
CC: [REDACTED] Attorney Party:Claimant

**Board of Review**

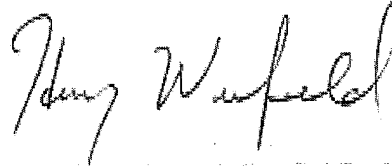
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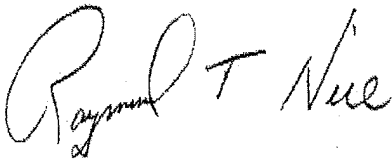
Jack L. Calabro, Chairman



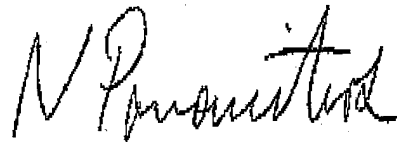
Michael J. Woodward, Board Member



Henry Winfield, Board Member



Raymond T. Nice, Board Member



Nicholas E. Panomitros, Board Member

Date and Mailed on 06/30/2015 at Chicago, Illinois