

IN THE COURT OF APPEALS OF IOWA

No. 7-259 / 06-0429

Filed May 23, 2007

JAMES E. JOHNSON,
Petitioner-Appellant,

vs.

**IOWA EMPLOYMENT APPEAL
BOARD and K & R EXPRESS,**
Respondents-Appellees.

Appeal from the Iowa District Court for Fayette County, Kellyann M. Lekar,
Judge.

James E. Johnson appeals a district court ruling affirming the Iowa
Employment Appeal Board's denial of unemployment insurance benefits.

AFFIRMED.

Larry F. Woods, Oelwein, for appellant.

Anita Garrison, Des Moines, for appellee Iowa Employment Appeal Board.

K & R Express, Waterloo, pro se.

Heard by Mahan, P.J., and Eisenhauer and Baker, JJ.

MAHAN, P.J.

James E. Johnson appeals a district court ruling affirming the Iowa Employment Appeal Board's (Board) denial of unemployment insurance benefits. We affirm.

I. Facts and Prior Proceedings

Johnson began employment at K & R Express as a truck driver on July 15, 2003. One month later, he quit over concerns about his wages, taxes, work hours, and trailer-tire blowouts. He filed a claim for unemployment on August 17, 2003, but was rehired by K & R two days later. Johnson continued to work for K & R for approximately one month until, on September 26, 2003, he quit after a verbal disagreement with K & R's president. On or about October 9, 2003, Johnson filed another claim for unemployment compensation. K & R promptly protested the claim, arguing Johnson quit voluntarily.

On October 14, 2003,¹ Iowa Workforce Development sent Johnson a letter stating, in pertinent part, the following:

Original Claim Date	08/17/03 REF=04
File Number	50 475 A 0

....

Decision:

You are eligible to receive unemployment insurance benefits as long as you meet all the other eligibility requirements. K & R Express will not be charged for benefits paid.

Explanation of Decision:

Our records indicate the claimant earned ten (10) times their weekly unemployment benefit amount in insured work after the disqualifying separation from this employer.

¹ This letter lists a decision date of October 8, 2003, and a notification date of October 14, 2003.

K & R's protest led to a telephone fact-finding interview. On November 4, 2003, an Iowa Workforce Development representative sent Johnson a letter stating, in pertinent part:

Original Claim Date 8/17/03 REF=05
 File Number 40 281 D 0

.....

Decision:

You are not eligible to receive unemployment insurance benefits.
 The employer's account will not be charged.

Explanation of Decision:

Our records indicate you voluntarily quit work on 10/03/03,^[2] by refusing to continue working. Your quitting was not caused by your employer.

Johnson appealed the representative's determination. A telephone hearing was held before an administrative law judge (ALJ) on December 10, 2003. Johnson did not mention the October 14 letter during the hearing. Instead, Johnson described the circumstances surrounding the second time he quit his job at K & R. Johnson explained how he was scheduled to pick up a trailer full of meat at the terminal yard in Waterloo. He arrived at the yard, but could not find the assigned trailer. He did not have the phone number for the dispatcher, so he called the president of K & R, Rich Brennan, at approximately 10:30 p.m. in the evening to tell him the trailer was not there. Brennan told Johnson in an "irate" and "kind of rude" manner that the truck was at the yard. Johnson went back to the yard but neither he nor his wife could find the trailer. Johnson then left a message on K & R's answering machine indicating that he quit.

²Johnson initially claimed he quit on October 3, not September 26.

The ALJ asked Johnson if there were any other problems that caused him to quit. Johnson went on to complain of bald trailer tires, problems with the refrigeration units on some of the trailers, and instances where he felt pressured to falsify his driving log so that he would comply with Iowa Department of Transportation regulations. He also indicated he was upset that K & R was not withholding enough federal taxes from his paycheck.

The ALJ upheld the representative's decision finding Johnson voluntarily quit his employment for no good cause attributable to the employer, noting

[i]t was his testimony that he quit in mid-August for the same reasons that he quit on September 26. The administrative law judge is not inclined to conclude that he had good cause for quitting in September when he returned to the employment in spite of the problems he alleged occurred during the initial period of employment.

Johnson appealed the ALJ's decision to the Board. The Board affirmed the decision, finding it to be correct and adopting the ALJ's findings of fact and conclusions of law as its own. The ensuing application for rehearing was denied.

Johnson then hired his present counsel and filed a petition for judicial review of the Board's denial of benefits. In his petition Johnson claimed, for the first time, that the employer did not have standing to appeal the October 14 decision granting benefits. He also argued the above-quoted language in the ALJ decision violated the doctrine of issue preclusion as it essentially redetermined the issue of good cause in the initial decision. Over the Board's objection, the district court admitted additional evidence pertaining to the October 14 letter. After reviewing the record and the additional evidence proffered by Johnson, the district court affirmed the Board's decision.

Johnson now appeals the district court's decision, claiming:

I. The doctrine of res judicata is controlling on the plaintiff's unemployment compensation claim.

II. Iowa Code section 96.6(4) makes the October 8, 2003 decision binding upon the parties to these proceedings regarding unemployment compensation.

III. There was not any appeal by either the Iowa Department of Employment Board or K & R Express from the October 8 (October 14), 2003 decision. Thus, the October 8 (October 14) decision is binding on the employer, employee and the Employment Appeal Board.

The Board responds by contending Johnson failed to preserve error on these claims because he did not raise the doctrine of res judicata or issue preclusion before either the ALJ or the Board.

II. Merits

A party is precluded from raising issues in the district court that were not raised and litigated before the agency. *Interstate Power Co. v. Iowa State Commerce Comm'n*, 463 N.W.2d 699, 701 (Iowa 1990); *Chauffeurs, Teamsters & Helpers, Local Union 238 v. Iowa Civil Rights Comm'n*, 394 N.W.2d 375, 384 (Iowa 1986). The rule stems from the doctrine of error preservation. To preserve error for appeal, a party must raise the issue before the agency. *Chauffeurs*, 394 N.W.2d at 384.

The record clearly indicates Johnson did not raise these three arguments prior to his appeal to the district court. Throughout his correspondence with the Board, he never mentioned a prior Iowa Workforce decision granting him benefits for his prior quit. During the hearing before the ALJ he indicated he had quit K & R once before, but he did not inform the ALJ that the quit resulted in

unemployment benefits. Consequently, we find all three arguments were not preserved for our review.

There are two reasons for the aforementioned rule of error preservation. “First, fairness requires that an issue be raised while one’s opponent still has an opportunity to respond to the issue. Second, the agency should have an opportunity to consider and rule on the issue.” *Soo Line R.R. v. Iowa Dep’t of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) (internal citations omitted). K & R never had the opportunity to respond to these issues. Similarly, the agency did not have an opportunity to consider or rule on these issues. We will not do so now on appellate review.

Our review of the record reveals substantial evidence supports the Board’s denial of benefits. Therefore, we affirm the decision of the district court.

AFFIRMED.