

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD J CARLSON**  
Claimant

**APPEAL NO. 09A-UI-19011-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINDOW WARES**  
Employer

**Original Claim: 10/25/09  
Claimant: Appellant (4)**

Section 96.6-2 – Prior Adjudication  
Section 96.5-1 – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit of Part-Time Job

**STATEMENT OF THE CASE:**

Richard J. Carlson (claimant) appealed a representative's December 1, 2009 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Window Wares, Inc. (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on February 2, 2010. This appeal was consolidated for hearing with one related appeal, 09A-UI-19012-DT. The claimant participated in the hearing. Steve Saylan appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is there a prior determination on the merits of this appeal that is binding on the parties and the outcome of this appeal?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective October 26, 2008. An Agency representative issued a decision dated February 6, 2009 (reference 02). That decision concluded that there was a January 5, 2009 separation that could be disqualifying, as it was a voluntary quit without good cause attributable to the employer, but further concluded that because the employment was treated as having been part time, the claimant was eligible for benefits and the employer's account might be subject to charge. No appeal was made of that decision and it has now become final.

The only wages the claimant earned after establishing his October 26, 2008 claim year were with the employer, about \$1,000.00 in the fourth quarter 2008, and about \$500.00 in the first quarter 2009. After expiration of the October 26, 2008 claim year, the claimant established a second claim year effective October 25, 2009. The claimant's base period under the new claim year is the third quarter 2008 through the second quarter 2009. Agency records indicate that the claimant has wage credits in the third quarter 2008 of \$7,498.00, and in the fourth quarter 2008 of \$3,393.00, both from the employer who preceded the employer named in this case. The claimant's highest quarter of earnings during the new base period was the third quarter of 2008, which did not include any wages

from the employer. His new weekly benefit amount was determined to be \$340.00, based on his wages in the third quarter of 2008.

Another representative's decision was issued dated December 1, 2009 (reference 02), the subject of this appeal. That decision implemented the disqualification portion of the February 6, 2009 (reference 02) decision, but did not address how or whether the part-time employment provision of that decision might apply.

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

If a prior determination has been made on the same issue and the adversely affected party fails to make a timely appeal of a representative's decision, the decision on that issue has become final and is not subject to further review, and will be binding on the parties in related proceedings. Iowa Code § 96.6-2.

If the claimant had a dispute with whether or not he should have been disqualified as a result of the separation from the employer, then he needed to have filed an appeal from that decision within the appeal period for that decision. Iowa Code § 96.6-2; Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979). The establishment of a new claim year does not negate or erase the effect of the prior determination. As the claimant did not make a timely appeal from the original disqualification decision, the administrative law judge now lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid or whether the administrative law judge would agree with the determination. See, Beardslee, supra; Franklin v. Iowa Department of Job Service; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

As a result, the determination that has become final is that the January 5, 2009 separation was a voluntary quit of part time employment without good cause attributable to the employer.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Iowa Code section 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that

quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

The claimant does have sufficient wages separate from his wages from the employer in his current benefit year to maintain an unemployment insurance claim. While the wages from the employer cannot be used to establish his weekly benefit amount, the rule does not preclude those wages from being used to satisfy the \$250.00 second benefit year earning requalification.

Therefore, while the prior February 6, 2009 (reference 02) decision has become final, it must be applied in its entirety, and its full application results in a conclusion that the claimant is otherwise eligible for unemployment insurance benefits in his new claim year based on wages other than from the employer, and the employer's account remains exempt from charge.

**DECISION:**

The representative's December 1, 2009 decision (reference 02) is modified in favor of the claimant. The prior February 6, 2009 (reference 02) decision has become final, but the effect is that the claimant is qualified to receive unemployment insurance benefits in his current benefit year if he is otherwise eligible, and the employer's account is not subject to charge because the claimant voluntarily quit part-time employment without good cause attributable to the employer.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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