

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW K RIEBHOFF
Claimant

APPEAL NO. 15A-UI-13825-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICANA LLC
Employer

OC: 11/08/15
Claimant: Respondent (2)

871 IAC 23.43(9) – Employer Liability on Combined Wage Claim

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 8, 2015, reference 01, decision that held the employer's account would not be relieved of charges for benefits paid to the claimant in connection with a combined wage claim wherein Iowa was the transferring state and Illinois was the paying state. After due notice was issued, a hearing was held on January 13, 2016. Lea Fitzgerald, Assistant General Manager, represented the employer. Claimant Andrew Riebhoff did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether the employer's account may be relieved of charges for benefits paid to the claimant in connection with a combined wage claim wherein Iowa is the transferring state and Illinois is the paying state.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Andrew Riebhoff was employed by Americana, L.L.C., d/b/a Americana Restaurant and Lounge as a part-time server until July 2015, when he voluntarily quit to relocate to Illinois. The employer continued to have work available for Mr. Riebhoff at the time he provided his quit notice and separated from the employment. Mr. Riebhoff subsequent established a combined wage claim for benefits in Illinois. Iowa transferred wages to Illinois to be included in the combined wage claim.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 23.43(9)(a) and (b), provides as follows:

Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying

state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified on Form 65-5522, Notice of Wage Transfer, that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date the Form 65-5522 was mailed to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(2) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Mr. Riebhoff's voluntary quit from Americana to relocate to Illinois was a voluntary quit without good cause attributable to the employer. Because the quit would have relieved the employer of liability in connection with an Iowa claim for benefits, the employer's account will be relieved of liability for benefits in connection with the Illinois combined wage claim.

DECISION:

The December 8, 2015, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer to relocate to Illinois. Because the quit would have relieved the employer of liability in connection with an Iowa claim for benefits, the employer's account will be relieved of liability for benefits in connection with the Illinois combined wage claim.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs