

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDY M KAAHAAINA
Claimant

APPEAL NO. 10A-UI-14573-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 07/02/08

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving/Requalification
Section 96.6-2 – Prior Adjudication

STATEMENT OF THE CASE:

Brandy M. Kaahaaina (claimant) appealed a representative's October 13, 2010 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits due to a separation from employment with CRST Van Expedited, Inc. (employer) from which she had not requalified. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on December 8, 2010. The claimant participated in the hearing. Sandy Matt 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.

ISSUES:

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

Has the claimant requalified after the separation in order to be eligible for any regular or emergency unemployment compensation (EUC) benefits?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective July 2, 2008. Her weekly benefit amount was calculated to be \$361.00. An Agency representative issued a decision dated August 13, 2008 (reference 01). That decision concluded that the separation was disqualifying because the claimant had voluntarily quit effective May 30, 2008 without good cause attributable to the employer. The claimant appealed that decision and a hearing before an administrative law judge was held on September 24, 2008 in 08A-UI-07588-AT; a decision was issued by the administrative law judge in that case on September 29, 2008 which affirmed the representative's decision that the claimant had quit on May 30, 2008 without good cause attributable to the employer. No appeal was made of that administrative law judge's decision.

The claimant attempted to find subsequent employment in the trucking industry but was frustrated in that effort at least in part because the information provided by the employer through the federal department of transportation (DOT) to prospective new employers of the claimant was that her last day of employment was June 16, 2008 and that the separation was due to her failure to report for a

drug test on that date. When the claimant was unable to obtain further employment in trucking, she worked at another employer in California during the fourth quarter of 2009 and the first quarter of 2010, earning \$1,078.28 and \$146.56 in those quarters respectively. As she continued to have difficulty in obtaining new employment, she sought to file a claim for unemployment insurance benefits in California; however, she was then found not to be monetarily eligible for a regular claim for unemployment insurance benefits in that state.

She was then advised that there was a possibility that she might be able to receive emergency unemployment compensation in Iowa, so she attempted to reopen her 2008 claim effective the week of August 15, 2010. She received some notices indicating she “may be” monetarily eligible for EUC benefits on her 2008 Iowa claim. Then on October 4, 2010, a representative’s decision (reference 02) was issued concluding that the claimant had requalified after her separation from employment from the employer, so that she might be eligible for benefits. However, within ten days of the issuance of that decision, the Agency representative realized that the claimant in fact did not have requalifying wages since the May 30, 2008 separation, and therefore the representative issued an amended decision on October 13, 2010 (reference 03), the subject of this appeal, which explained that the October 4, 2010 (reference 02) decision had been issued in error was “hereby declared to be ‘null and void.’” That decision further explained that the claimant still needed to show she had earned at least ten times her weekly benefit amount, in this case \$3,610.00, in order to requalify for any benefits on her Iowa claim.

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 administrative law judge’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 she should have been disqualified as a result of the separation from the employer, then she needed to have filed an appeal from the judge’s 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 affect of the prior determination. As the claimant did not make a timely appeal from the prior administrative law judge’s decision, this 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. 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).

In this case, it is further apparent that the claimant did not appeal the prior administrative law judge’s decision because she in fact agreed with it. She only seeks to appeal now because the employer is not characterizing the 2008 separation to the DOT or prospective employers in the same way as determined by the prior administrative law judge. However, Iowa Code § 96.6-4 provides:

4. *Effect of determination.* A finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States.

Whether the employer is properly characterizing the separation to the DOT or other prospective employers is outside of the scope of authority of this administrative law judge to address.

As it has already been determined in the prior administrative law judge's decision that, at least for purposes of unemployment insurance benefit eligibility, the claimant voluntarily quit as of May 30, 2008, she is not eligible to receive unemployment insurance benefits until she has earned ten times her weekly benefit amount.

Iowa Code section 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge concludes that the claimant has not requalified for benefits since the separation from this employer. This disqualification also applies to eligibility for EUC benefits. The federal program specifies that EUC benefits are only available for workers who would be "otherwise eligible" to receive regular unemployment compensation benefits. Public Law 110-252, Title VI, effective June 30, 2008. See also, Iowa Code § 96.19-20; 871 IAC 871 IAC 24.50(2)(c). The claimant is not "otherwise eligible," as she has not requalified after the 2008 separation from employment.

DECISION:

The representative's October 13, 2010 decision (reference 03) is affirmed. The claimant is not qualified to receive unemployment insurance benefits in Iowa, either regular benefits or EUC benefits, as she had a disqualifying separation from employment from which she has not yet requalified.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw