

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY K MORITZ

Claimant

APPEAL NO. 11A-UI-10994-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASSOCIATED INTERNISTS PC PHYS OFF

Employer

OC: 07/10/11

Claimant: Respondent (4-R)

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 10, 2011, reference 02, decision that allowed benefits and that concluded the employer's account could be charged for benefits. After due notice was issued, a hearing was held on September 13, 2011. The hearing in this matter was consolidated with the hearings in Appeal Numbers 11A-UI-10995-JTT and 11A-UI-10998-JTT. The claimant in each case participated and provided testimony. Dan Shannon represented the employer. The administrative law judge official notice of the employer account information for Associated Internists, P.C., and Trimark Physicians Group, Inc. For each claimant, the administrative law judge took official notice of a July 28, 2011, reference 01 decision that allowed benefits based on a lay off due to the closing of a business operated by Trimark Physicians Group, Inc. For each claimant, the administrative law judge took official notice of wages the claimant earned while employed with Trimark Physicians Group after Associated Internists, P.C., ceased being the employing entity.

ISSUES:

Whether the claimant separated from the employment with Associated Internists, P.C., for a reason that would disqualify the claimant for unemployment insurance benefits.

Whether the employer account of Associated Internists, P.C., may be assessed for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Associated Internists, P.C., (employer account number 148732) until August 1, 2011, when that employer entity sold 100 percent of business assets to Trimark Physicians Group, Inc., (employer account number 217118). Trimark continued to operate the business at the same location until July 2011. In connection with the sale, the claimant's employer continued uninterrupted and without any changes in the conditions of the employment. The claimant was not laid off and did not have to reapply to continue as an employee of the new business owner. The claimant earned more than 10 times her weekly benefit amount from the

employment with Trimark before that business closed in July 2011. There is no common ownership between the two employer entities.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The weight of the evidence establishes that there was no layoff, quit, discharge or other separation that occurred in connection with the change in ownership that was effective January 1, 2011. Instead, the employment continued uninterrupted and without change for several months thereafter until the new owner closed the business.

Iowa Administrative Code section 871 IAC 23.30(1) provides as follows:

Any employer who becomes a successor to an employer account shall be held liable for any unpaid contributions, reimbursable benefit payments, interest, penalties or costs which are owed to the department by the predecessor at the time of the transfer. An employer which is found to be a successor to a reimbursable account shall also be liable to reimburse the department for benefits paid after the date of acquisition that are based on wages paid by the reimbursable predecessor prior to the date of acquisition whether or not the successor has elected, or is eligible to elect, to become a reimbursable employer with respect to the successor's payroll.

The weight of the evidence suggests a successor employer relationship, though that issue will need to be investigated and determined by the Claims Division with proper notice to Trimark Physicians Group, Inc. In any event, once Associated Internists, P.C., ceased being the employing entity, the claimant went on to earn 10 times her weekly benefit amount before she established her claim for benefits. The claimant remains eligible for benefits, provided she is otherwise eligible. The employer account of Associated Internists, P.C., will not be charged for benefits paid to the claimant.

DECISION:

The Agency representative's August 10, 2011, reference 02, decision is modified as follows. The claimant remains eligible for benefits, provided she is otherwise eligible. The employer account of Associated Internists, P.C., will not be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division for determination of whether Trimark Physicians Group, Inc., (employer account number 217118) was a successor to Associated Internists, P.C., (employer account number 148732) and may be charged for benefits based on wage credit accrued prior to the January 1, 2011 transfer in ownership.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs