

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L DEWOLF
Claimant

APPEAL NO: 09A-UI-15103-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALBERT AUTO SERVICES INC
Employer

OC: 05/17/09

Claimant: Respondent (1/R)

871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Albert Auto Services, Inc. (employer) appealed a representative's October 2, 2009 decision (reference 02) that concluded Jennifer L. DeWolf (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2009. The claimant received the hearing notice and responded by calling the Appeals Section on October 19, 2009. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. Chad Albert appeared on the employer's behalf. Cecil Lamphier participated on behalf of the new owner of the business, Ellerby Enterprises. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer Albert Auto on May 5, 2008. She worked full time as a receptionist in the auto service business. Her last day of work in the operation was May 11, 2009.

As of November 1, 2008 the claimant's employer became Ellerby Enterprises, Inc. This occurred because as of that date the employer Albert Auto sold one of its three locations to Ellerby Enterprises, also an employer with other prior locations. The claimant's employment with Albert Auto ended because of the sale of the business location. She continued working in her position under employer Ellerby Enterprises until May 11, 2009. Her employment ended as of that date because employer Ellerby dismissed her from employment. A notice of the filing of

the claimant's claim for unemployment insurance benefits was sent to employer Ellerby on May 20, 2009, and employer Ellerby did not protest her claim.

The two employers did begin a process of a partial transfer of experience for Ellerby to be a successor employer to Albert Auto's sold location for purposes of unemployment insurance charges. The transfer process appears to have been disrupted. Both employers have been unable to obtain clarification from the Agency as to whether the transfer was completed and whose account is subject to charge for benefits paid based on wage credits accrued on behalf of employees of the sold location prior to November 1, 2008.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

871 IAC 24.1(113)a provides:

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

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) 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.

The separation between the claimant and employer Albert Auto was a layoff by the employer due to the sale of the business location; employer Albert Auto had no work it could provide to the claimant. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

The chargeability of the employer's account for any benefits that might be paid to the claimant then rests on whether benefit payments extend long enough to reach the employer's wage credits pursuant to the inverse chronological order charging under Iowa Code § 96.3-5, and whether there has been a transfer of the wage credits and liability under Iowa Code § 96.7-2-a(2) and 871 IAC 23.28 and 871 IAC 23.30(1)(2) from the employer to the company who purchases its business. The transfer status was unclear to the two employers, and was outside the administrative law judge's jurisdiction to determine. This matter is remanded to the Agency Field Audit unit to contact the two employers and assist in resolution of the transfer issue. The two employer representatives can be reached at: Chad Albert, Albert Auto – 319/297-7391; and Cecil Lamphier, Ellerby Enterprises – 319/298-2886.

DECISION:

The representative's October 2, 2009 decision (reference 02) is affirmed. The claimant was laid off from employer Albert Auto as of November 1, 2008 due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The matter is remanded to the Field Audit unit to contact the employers and for investigation and determination of the transfer and chargeability issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs