

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA A BLOCHLINGER
Claimant

TC SUBWAY LLC
Employer

APPEAL 19A-UI-05077-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/19/19
Claimant: Respondent (1-R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On June 24, 2019, TC Subway LLC (employer) filed an appeal from the June 21, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination there was no evidence provided to show Jessica A. Blochlinger (claimant) was discharged due to willful or deliberate misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 19, 2019. The claimant participated personally and was represented by Stacy Blochlinger. The employer participated through Owner Ted Camamo. The Employer's Exhibit 1 was admitted into the record.

ISSUES:

Was the claimant separated due to the business being sold?
After the sale, did the claimant continue working for an acquiring or successor employer?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Sandwich Artist beginning on January 24, 2019, and was separated from employment with this employer on March 15, 2019, when the business was sold to Carroll Subway, Inc. (CSI).¹ CSI is operated by Steve Gute who can be reached at 712-790-7240. Whether CSI is a successor corporation to the employer has not yet been investigated or adjudicated by the Tax Bureau of Iowa Workforce Development (IWD).

The claimant worked for CSI from March 15 through early April 2019, when she was separated from employment. The administrative record shows CSI has not yet reported any wages paid to

¹ It appears, based on agency records, this may be the Carroll Subway Inc with account number 276503 located at P.O. Box 394, Carroll, Iowa 51401.

the claimant. The issue of whether the claimant's separation from CSI qualifies her for benefits has not yet been investigated or adjudicated by the Benefits Bureau of IWD.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$581.00, since filing a claim with an effective date of May 19, 2019 and a reopen date of June 2, 2019, for the seven weeks ending July 20, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was separated from this employer when the business sold which is not a disqualifying separation. Benefits are allowed, provided the claimant is otherwise eligible.

Iowa Code section 96.5(1)i provides:

Causes for disqualification.

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

...

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant was employed by TC Subway until its sale, and continued employment with the purchasing business entity. Accordingly, benefits are allowed, provided claimant is otherwise eligible. As benefits are allowed, the issue of overpayment is moot.

The chargeability of the employer's account is in question as the acquisition by CSI has not yet been investigated or adjudicated by the Tax Bureau. If CSI does not receive a transfer of experience from the employer, then charges to the employer's account will be charged to the unemployment compensation fund. Whether CSI is a successor corporation and if it will acquire any transfer of experience from the employer is remanded to the Tax Bureau of IWD for an investigation and decision with appeal rights to both employers. Additionally, whether CSI properly reported wages paid to the claimant is remanded for investigation to the Tax Bureau of IWD to include both parties.

Whether the claimant's separation from CSI qualifies her for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for a fact-finding interview and unemployment insurance decision to include both parties with appeal rights.

DECISION:

The June 21, 2019, reference 01, unemployment insurance decision is affirmed, pending the outcome of the remanded issues. The claimant was unemployed from this employer due to a sale of the business. Benefits are allowed, provided the claimant is otherwise eligible. The issue of overpayment is moot. If CSI does not receive a transfer of experience from the employer, then charges to the employer's account shall be charged to the unemployment compensation fund.

REMANDS:

Whether CSI is a successor corporation and if it will acquire any transfer of experience from the employer is remanded to the Tax Bureau of IWD for an investigation and decision with appeal rights to both employers. If CSI does not receive a transfer of experience from the employer, then charges to the employer's account shall be charged to the unemployment compensation fund.

Whether CSI properly reported wages paid to the claimant is remanded for investigation to the Tax Bureau of IWD to include both parties.

Whether the claimant's separation from CSI qualifies her for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for a fact-finding interview and unemployment insurance decision to include both parties with appeal rights.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn