

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIO FERNANDEZ
Claimant

APPEAL NO. 14A-UI-13217-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS ENTERPRISES INC
Employer

OC: 11/09/14
Claimant: Respondent (4)

871 IAC 23.28 - Successorship

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 10, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been laid off effective December 13, 2013. After due notice was issued, a hearing was held on January 21, 2015. Claimant Mario Fernandez did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Connie Hickerson of Equifax represented the employer and presented testimony through Doug Carter. Exhibit One and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the December 10, 2014, reference 02, decision that disqualified the claimant for benefits and that relieved employer WEI Sales, L.L.C., of liability for benefits based on an Agency conclusion that the claimant was discharged for misconduct in connection with the employment.

ISSUES:

Whether the claimant separated from the employment with Wells Enterprises, Inc. If so whether the separation was for a reason that disqualifies the claimant for benefits or that relieves the employer of liability for benefits.

Whether WEI Sales, L.L.C., employer account number 538451, is a successor employer to Wells Enterprises, Inc., employer account number 121768, for purposes of determining liability for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mario Fernandez commenced his full-time employment with Wells Enterprises, Inc., account number 121768, in April 2013 and continued to perform for employer until December 29, 2013, when Wells Enterprises, Inc., transferred part of its business to WEI Sales, L.L.C., account number 538451. There was no break in Mr. Fernandez's employment. Mr. Fernandez continued to work for the new employer entity under the same conditions as existed before the transfer until November 11, 2014, when the employer discharged him from the employment. On

December 10, 2014, Iowa Workforce Development entered a reference 02 decision that disqualified Mr. Fernandez for benefits in connection with the November 11, 2014 discharge from WEI Sales, L.L.C. Mr. Fernandez did not appeal from that decision and the decision became a final Agency decision.

On January 16, 2014, Iowa Workforce Development had entered a decision that WEI Sales, L.L.C., was a successor employer to Wells Enterprises. WEI Sales, L.L.C., was split off from Wells Enterprises, Inc., to become a separate employer entity.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113)(a) 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.

A “successor employer” is an employing unit that acquired the business, or substantially all the assets of an employing unit, that was subject to the provisions of Iowa Code Chapter 96 prior to the acquisition and which continues to operate the business. See 871 IAC 23.28(1). Substantially all of the assets are acquired if an employing unit acquires substantially all of the assets of any employer which generate substantially all of the employment. See 871 IAC 23.28(3).

If a business, or a clearly segregable and identifiable part of a business, for which unemployment insurance contributions have been paid is sold or transferred to a subsequent employing unit, and the successor employer, having qualified as an employer as defined by Iowa Code section 96.19(16)(b), continues to operate the business, the successor employer shall assume the position of the predecessor employer with respect to the predecessors’ payrolls, unemployment insurance contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the business. See Iowa Code section 96.7(2)(b)(1).

The weight of the evidence establishes that there was no suspension of the claimant’s employment that resulted from WEI Sales, L.L.C., being spun off from Wells Enterprises, Inc. There was instead one continuous employment. As the successor employing entity, WEI Sales, L.L.C., stepped into the shoes of its former parent and any liability for benefits was shifted to WEI Sales, L.L.C. The latter employer entity was relieved of liability in the December 10, 2014, reference 02, decision that disqualified Mr. Fernandez for benefits in connection with the November 11, 2014 discharge from WEI Sales, L.L.C. Based on the successor relationship, Wells Enterprises, Inc., is likewise relieved of liability.

DECISION:

The December 10, 2014, reference 01, decision is modified as follows. WEI Sales, L.L.C., employer account number 538451, is a successor employer to Wells Enterprises, Inc., employer account number 121768. The claimant had one continuous employment despite the split off of WEI Sales, L.L.C., from Wells Enterprises, Inc. WEI Sales, Inc., was relieved of liability in the December 10, 2014, reference 02, decision that disqualified claimant for benefits in connection with the November 11, 2014 discharge from WEI Sales, L.L.C. Based on the successor relationship, Wells Enterprises, Inc., is likewise relieved of liability.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs