

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA ANDERSON

Claimant

APPEAL NO. 09A-UI-15275-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JERRY W KAALBERG DDS PC

Employer

OC: 08/23/09

Claimant: Respondent (4)

Section 96.7-2-b - Successorship

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 5, 2009, reference 03, that concluded the claimant was eligible for benefits and the employer's account was chargeable for benefits because she was laid off for lack of work. A telephone hearing was held on November 12, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Jerry Kaalberg participated in the hearing on behalf of the employer with a witness, Ann Koppenhaver.

ISSUES:

Was the claimant laid off due to lack of work?

Did the claimant's employment end due to the sale of the business?

FINDINGS OF FACT:

The claimant worked for the employer, Jerry W. Kaalberg DDS (Account #147324), until April 14, 2008. Effective April 14, 2008, the employer sold part of its business, to Karen K. Wolf, DDS (Account # 342983). The claimant continued to work for Karen K. Wolf DDS until June 29, 2009, when her employment ended.

The employer protested the claim filed by the employer stating the claimant was employed in a part of its business that was sold on April 14, 2008.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer, who are discharged for work-connected misconduct, or who refuse suitable. Iowa Code §§ 96.5-1, 96.5-2, and 96.5-3. The evidence is clear that the separation on April 14, 2008, was not a voluntary quit, discharge for misconduct, or refusal of work. The claimant is not subject to disqualification.

The next question is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-b states that if a business or a part of a business is sold to another employing unit and the successor employer continues to operate the business, the successor employer shall assume the position of the predecessor employer with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the enterprise or business.

In addition, 871 IAC 23.43(14) provides that benefits based on wages earned with a transferring employer paid to a person who worked in and was paid wages for work with the acquiring employer shall be transferred to the balancing account and the transferring employer shall be relieved from charges. The title of this rule indicates that it applies to the sale of part of an employer's business where the acquiring employer does not receive a partial transfer of experience.

If there is a partial successorship, the employer, Jerry W. Kaalberg DDS (Account #147324), will not be chargeable for benefits because the charges will be assumed by the Karen K. Wolf, DDS (Account # 342983) as provided in Iowa Code § 96.7-2-b. If there is no partial transfer of experience, the employer would be relieved of charges under 871 IAC 23.43(14).

DECISION:

The unemployment insurance decision dated October 5, 2009, reference 03, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits based her separation from employment. The employer's account is not chargeable for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css