

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARA D DAVIS

Claimant

B & B ENTERPRISES OF QUINCY

Employer

APPEAL 23A-UI-08739-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/30/23

Claimant: Respondent (5)

Iowa Code § 96.5(1) – Layoff from Work

Iowa Code § 96.3(7) – Overpayment of Benefits

Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the September 5, 2023 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon a discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2023. The claimant did not participate. The employer participated through Human Resource Manager Leah Scheiter. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant's separation from employment disqualifying?

Was the claimant overpaid benefits and/or should she repay any benefits?

Is the employer's account chargeable due to participation in the fact-finding interview?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for this employer as a full-time sales consultant. Claimant's mother was the owner of the business. Claimant's sister is Ms. Scheiter, the witness for employer who participated in the hearing for this case.

Effective April 29, 2023, the business was sold to another company. This employer did not have work available to the claimant as of that date. The claimant completed an application to work for the employer who purchased this company. Claimant began working for the new employer as of May 1, 2023. She remained employed on a full-time basis with this new employer until sometime in August of 2023 when she began teaching for Ottumwa Community School District. The new employer who purchased B & B Enterprises of Quincy closed the physical location where the claimant had previously worked and required any employees who lived in Iowa to work remotely.

Claimant's administrative record establishes that she filed a claim for unemployment insurance benefits with an effective date of July 30, 2023. Since her application, she has not filed any

weekly-continued claims for benefits and no benefits have been paid to the claimant to date. The owner of the business, Barbara Moore, participated in the fact-finding interview that Iowa Workforce Development conducted on September 1, 2023 and told the interviewer that the business had been sold effective April 29, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(1) provides:

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:

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment.¹ A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.² It is clear that the claimant did not voluntarily quit her position, nor was she discharged.

This employer sold the company to another owner, and it no longer had work available to the claimant as of April 29, 2023. Therefore, the claimant was laid off from work. Even though the claimant became employed with the new employer, this does not mean that claimant's separation from employment with B & B Enterprises of Quincy was disqualifying in any way.

Iowa Admin. Code r. 871-24.1(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 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.

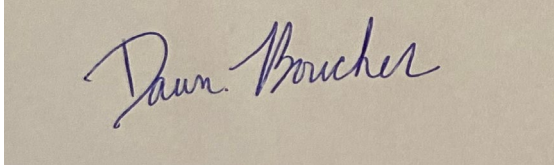
Because the claimant was laid off from work with B & B Enterprises of Quincy, that is not considered a disqualifying separation from employment. Benefits are allowed, provided the claimant remains otherwise eligible. The issues of overpayment and chargeability are moot.

¹ *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989).

² *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

DECISION:

The September 5, 2023 (reference 01) unemployment insurance decision is modified with no change in effect. Claimant was laid off due to lack of work effective April 29, 2023. There was no disqualifying separation from employment with this employer. The claimant is allowed benefits, provided she remains otherwise eligible. The issues of overpayment and chargeability are moot.



Dawn Boucher
Administrative Law Judge

September 29, 2023
Decision Dated and Mailed

db/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.