

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEC D MARIANI**  
Claimant

**APPEAL NO. 08A-UI-07822-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS SYMPHONY ORCHESTRA  
ASSOCIATION**  
Employer

**OC: 06/29/08 R: 12  
Claimant: Respondent (2)**

871 IAC 23.43(9) – Employer Liability on Combined Wage Claim

**STATEMENT OF THE CASE:**

Cedar Rapids Symphony Orchestra filed a timely appeal from the August 22, 2008, reference 02, decision that denied the employer's request to be relieved of liability on a Combined Wage Claim Transferred to Wisconsin. After due notice was issued, a hearing was held on September 16, 2008. Claimant Alec Mariani did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Finance Director Nancy Duncan, represented the employer and presented additional testimony through Personnel Manager Bryan Hardester, Musical Director Tim Hankewich, and Education Director Rochelle Naylor. Exhibits One and Two and Department Exhibit D-1 were received into evidence.

**ISSUE:**

Whether the employer may be relieved of charges for benefits paid to the claimant in connection with a Combined Wage Claim transferred to Wisconsin.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Alec Mariani commenced his employment relationship with the Cedar Rapids Symphony Orchestra in 2005 and worked as a contract musician and youth orchestra director. The employment was part-time. Mr. Mariani last performed work for the employer in May 2007. On June 12, 2007, Mr. Mariani submitted an informal request for a leave of absence. On June 17, 2007, Mr. Mariani submitted a formal request for a leave of absence. In the request, Mr. Mariani stated that he had accepted a one-year appointment at the University of Wisconsin - Whitewater for the upcoming year. Mr. Mariani indicated that his plans for the 2008-2009 were uncertain.

The request for the leave of absence was made pursuant to the terms of the employer's master contract. The contract provided musicians with the opportunity to request a leave of absence not to exceed one performance season. If the leave of absence was approved, the musician could return at the end of the leave of absence period without re-auditioning. The performance

season included the Freedom Fest concert in July, as well as the September 2007 to May 2008 concert season.

The employer approved Mr. Mariani's request for a leave of absence. In the spring of 2008, Mr. Mariani notified Personnel Manager Bryan Hardester that he had accepted a position in Utah and would not be returning to his position at the Cedar Rapids Symphony Orchestra.

**REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 23.43(9)(a) and (b), provides as follows:

Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified on Form 65-5522, Notice of Wage Transfer, that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date the Form 65-5522 was mailed to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

Iowa Code section 96.5(1)(a), provides as follows:

An individual shall be disqualified for benefits:

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. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Workforce Development rule 871 IAC 24.22(2)(j) provides as follows:

Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee–individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee–individual, the individual is considered laid off and eligible for benefits.

(2) If the employee–individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer. Iowa Code section 96.7(2)(a)(2).

The weight of the evidence indicates that Mr. Mariani voluntarily quit the employment without good cause attributable to the employer. Accordingly, the employer's account will be relieved of charges for benefits paid to the claimant.

**DECISION:**

The Agency representative's August 22, 2008, reference 02, is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. Accordingly, the employer's account will be relieved of charges for benefits paid to the claimant in connection with the combined-wage claim transferred to Wisconsin.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css