

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

BETTINA K CLAUSEN

Claimant,

and

MIDWEST ELITE HCS INC

Employer.

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HEARING NUMBER: 13B-UI-06212

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The EAB notes that this claim was filed with an original claim date of January 20, 2013. The Claimant's single day of work for this Employer was in April, 2013. The base period for a January, 2013 claim under no circumstances can include April 2013. Indeed, the base period always, with no exception, predates the original claim date. Only base period employers for a given original claim date are charged for benefits collected on the associated claim. Thus under no circumstances can the Employer be charged for benefits on this claim. The argument over outside sales is entirely beside the point. The only issue on *this* claim is whether the separation is disqualifying, and the Employer does not even argue otherwise. We look into this issue because if a claimant quits full-time employment during the claim year without good cause, then that claimant would be disqualified on the active claim and the base period employers would be relieved of charges until the claimant requalifies. There is no issue in such cases over charging the non-base period employer (the claim year employer). Such Employers are never charged until they

come within a base period. We note that if we assume that the Employer is correct and the Claimant's service did not fall within the definition of "employment" it follows that she was not separated from "employment" and so cannot be disqualified for that separation – in other words, exactly the same bottom line result as reached in today's decision.

If, in the future, the Claimant should file a new claim or subsequent benefit year claim for benefits (at the earliest January of 2014) and at that time the Employer gets notice of claim because it is in the base period and has reported wages for the Claimant then the Employer would be free to protest on the basis it raises now. Unless, and until, the Claimant files a claim where it is in the realm of possibility that the Employer could be charged, objections to be being charged are not relevant. If the Employer wants to see if this Claimant even has wage credits attributable to this Employer, or the Employer has other issues related to its tax rate or classification of its workers, the Employer should contact Workforce Development directly.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

RRA/fnv