

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID BALLER

Claimant

APPEAL NO. 11A-UI-01638-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 04/25/10

Claimant: Respondent (6/R)

Section 96.6—2 - Vacating Representative's Decision

STATEMENT OF THE CASE:

An appeal was set up as filed from a representative's decision issued on January 26, 2011 which on its face indicated it was a reference 03 decision, but which is treated in the Agency records as reference 04. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on March 7, 2011. Prior to the hearing being held, the administrative law judge determined that no hearing was necessary or appropriate and that a decision vacating the representative's decision and remanding the matter for further proceedings should be made on the record. Based on a review of the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the representative's decision be vacated and remanded for further proceedings?

FINDINGS OF FACT:

David Baller (claimant) established an unemployment insurance benefit year effective April 25, 2010 after an April 1, 2010 separation from employment between himself and The University of Iowa (employer). A decision was issued on May 20, 2010 (reference 01) concluding that the separation was not disqualifying. It does not appear that the employer appealed that decision. As of the week ending May 23, 2010, the claimant began receiving regular unemployment insurance benefits, which he exhausted the week ending November 13, 2010. He then began receiving emergency unemployment compensation (EUC). However, that program initially expired as of the week ending November 27, 2010, so the claimant ceased receiving benefits at that time.

The EUC program was subsequently reauthorized. The claimant sought to resume receiving benefits by reopening his claim by filing an additional claim effective January 2, 2011. That resulted in the issuance of a new notice of claim to the employer on January 7, 2011; that notice indicated that "based on claimant information, you may be notified about a fact-finding interview prior to returning this notice." A fact-finding interview was indeed held prior to January 26, 2011. The employer participated in the January 2011 fact-finding; the claimant did not. The

information provided by the employer in that fact-finding still focused on the April 1, 2010 separation from employment; there is no evidence that the claimant had a subsequent period of employment with the employer and a new separation.

On January 26, 2011, the Agency representative who had conducted the fact-finding interview sought to close out the proceeding through the entry of a decision regarding the separation from employment. The representative entered coding into the Agency system for the automatic generation of a decision to be printed on January 27, 2011. That decision was designated as reference 03, and was phrased in terms of the April 1, 2010 separation from employment; however, the code that was entered would generate a decision that the separation was disqualifying, contrary to the decision that had been issued on May 20, 2010 (reference 01).

After entering the coding for the decision into the system, the representative apparently realized that the code that had been entered was not the code for the decision the representative had intended to enter, and sought to overwrite the decision. A manual decision form was used, which would be printed and mailed the same day, January 26, 2011. That decision bore an issuance date of January 26, 2011, but still bore the reference 03 designation. The language used in the manual decision indicated that "the decision of the representative of the department on 1/26/11, issued on 1/26/11, was issued in error and is now declared null and void." The decision went on to state that new information indicated that the claimant was now "eligible to collect military unemployment insurance benefits effective 01/02/11." There is no record of the claimant having any military wages upon which ex-service member unemployment compensation could be paid.

The employer, having received both of the decisions captioned as reference 03, was understandably perplexed, and appealed, resulting in the matter coming before this administrative law judge for review.

REASONING AND CONCLUSIONS OF LAW:

The Agency representative voided the original January 2011, reference 03, decision addressing the separation from employment, but in the process entered language in the new decision indicating that military or ex-service person benefits could be paid, which is clearly erroneous; if there are no military wages, there is no eligibility to such benefits. As a result, the question of the effect of the claimant's prior separation from employment upon his eligibility after the reopening of his claim must still be resolved.

The representative's second reference 03 decision, otherwise cited as reference 04, which incorrectly indicated the eligibility for ex-service member unemployment compensation benefits, is hereby voided and vacated. This does not resurrect the first reference 03 decision, which did address the employer's new protest to the claimant's additional claim, as that decision had already been voided. The matter must be remanded to the Claims Section for review and issuance of a new appealable decision that properly addresses the employer's new protest. If either party then disagrees with that future decision, that party may appeal that decision to the Appeals Section.

DECISION:

The decision of the representative dated January 26, 2011 (the second reference 03 decision, more properly cited as reference 04) is **VACATED** and is null and void, as it was clearly entered in error and without legal basis. There will be no hearing in this case on March 7, 2011. The matter is remanded to the Claims Section for issuance of a new decision to address the affect of the separation from employment on the claimant's eligibility to receive unemployment insurance benefits upon the reopening of his claim. Unless or until such time as some new decision might be issued concluding that the claimant is not eligible to receive unemployment insurance benefits, benefits will continue to be allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw