

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**AMBER M GRIGGS**

Claimant

**OHM SHIV HOTEL LLC**

Employer

**APPEAL 17A-UI-06437-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/14/17**

**Claimant: Respondent (5)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work  
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations  
Iowa Code § 96.5(1)i – Voluntary Quitting/Business Sale  
Iowa Code § 96.7(2)(b)(1) – Successorship  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 16, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 11, 2017. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Naman Patel, owner/manager. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant quit the employment with good cause attributable to the employer, was she laid off due to a lack of work, or was she discharged for misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operated as the Quality Inn Hotel located in Newton, Iowa until it sold the business to Ohm Shiv Hotel LLC., effective May 15, 2017. The administrative record reflects that the claimant's wages for employer, Neelam Lodging Inc. (Account 520090) have transferred to the successor employer account, Ohm Shiv Hotel L.L.C. (Account 592312). The claimant did not ever perform work for this successor employer, Ohm Shiv Hotel L.L.C., after the business was sold.

The claimant was employed full-time as a housekeeper with Neelam Lodging Inc. and was separated from employment on May 15, 2017, when she was laid off because the employer sold the business. The claimant last performed work on May 8, 2017 and was aware she could reapply with the new employer, Om Shiv Hotel LLC. The claimant was not guaranteed a position and could not continue performing her work as a housekeeper after May 15, 2017. The claimant's separation with Neelam Lodging Inc. is addressed in Appeal 17A-UI-06438-JC-T.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$829.00, since filing a claim with an effective date of May 14, 2017. The administrative record also establishes that the employer did participate in the June 8, 2017 fact-finding interview by way of Naman Patel.

### **REASONINGS AND CONCLUSIONS OF LAW:**

Iowa Administrative Code rule 871 IAC 24.1(113)(2) defines layoff as follows:

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.

A claimant will not be disqualified for benefits if the claimant is unemployed as a result of the claimant's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. Iowa Code Section 96.5(1)(i).

In this case, the claimant did not continue employment when Neelam Lodging Inc. sold its business to this employer, Ohm Shiv Hotel L.L.C. on May 15, 2017. The claimant's separation with Neelam Lodging Inc. on May 15, 2017, did not disqualify her for benefits. (See Appeal 17A-UI-06438-JC-T.) The separation was indeed a layoff from that company. That company no longer had work for the claimant effective May 15, 2017. The claimant did not voluntarily separate from that employer and her involuntary separation from that company was not based on any allegation of misconduct on the part of the claimant. Based on the May 15, 2017 separation, she would be eligible for benefits, provided she meets all other eligibility requirement. See Iowa Code § 96.5(1) (regarding voluntary quits) and § 96.5(2)(a) (regarding discharges for misconduct).

Iowa Code § 96.7(2)(b)(1) provides, in relevant part, as follows:

b. (1) If an organization, trade, or business, or a clearly segregable and identifiable part of an organization, trade, or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 16, paragraph "b", continues to operate the organization, trade, or business, the successor employer shall assume the position of the predecessor employer or employers 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 organization, trade, or business.

Because Workforce Development has ruled that Ohm Shiv Hotel L.L.C. (employer account number 592312) is a successor employer to Neelam Lodging Inc. (Account 520090) effective

May 15, 2017, any liability for benefits that would otherwise have been assigned to Neelam Lodging Inc.'s "experience" has been shifted to Ohm Shiv Hotel L.L.C. Ohm Shiv Hotel L.L.C is therefore liable for any benefits paid to the claimant based upon the separation with the predecessor employer, Neelam Lodging Inc.

**DECISION:**

The June 16, 2017, (reference 02), decision is modified with no change in effect as follows. The claimant was laid off from her employment with Neelam Lodging Inc. (Account 520090) effective May 15, 2017, when the employer was sold to Ohm Shiv Hotel L.L.C. (employer account number 592312). The claimant's separation with Neelam Lodging Inc. on May 15, 2017, did not disqualify her for benefits. The claimant is eligible for benefits, provided she is otherwise eligible. Because Ohm Shiv Hotel L.L.C. (employer account number 592312) is a successor employer to Neelam Lodging Inc. (Account 520090) effective May 15, 2017, liability for benefits is shifted to Ohm Shiv Hotel L.L.C.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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