

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AKOUAVI ATTIOGBE**  
Claimant

**APPEAL 18A-UI-08345-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**  
Employer

**OC: 06/17/18**  
**Claimant: Respondent (4)**

Iowa Code § 96.6(3) – Appeals  
Iowa Admin. Code r. 871-24.19(1) – Determination and Review of Benefit Rights  
Iowa Admin. Code r. 871-24.28(6-8) – Prior Adjudication

**STATEMENT OF THE CASE:**

Swift Pork Company, (employer) filed an appeal from the July 26, 2018, reference 01, unemployment insurance decision that allowed Akouavi Attiogbe, (claimant) to receive benefits based upon a decision in a prior benefit year for the same separation and found the employer's account may be subject to charge. After due notice was issued, a hearing was scheduled for telephone conference call on August 28, 2018. No hearing was held as there was sufficient evidence in the appeal letter, accompanying documents, and administrative record to resolve the matter without testimony.

**ISSUE:**

Was the separation adjudicated in a prior claim year?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The separation at issue has been adjudicated in a prior claim year effective May 14, 2017 in the unemployment insurance decision dated June 20, 2017, reference 01. That decision, which allowed benefits but did not charge the employer's account, as the claimant had requalified for benefits, has become final.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the separation at issue has been adjudicated in a prior claim year.

Iowa Code section 96.6(3) provides:

Filing – determination – appeal.

3. Appeals.

a. Unless the appeal is withdrawn, an administrative law judge, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. The hearing shall be conducted pursuant to the provisions of chapter 17A relating to hearings for contested cases. Before the hearing is scheduled, the parties shall be afforded the opportunity to choose either a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The notice for a telephone or in-person hearing shall be sent to the all the parties at least ten calendar days before the hearing date. Reasonable requests for the postponement of a hearing shall be granted. The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

b. Appeals from the initial determination shall be heard by an administrative law judge employed by the department. An administrative law judge's decision may be appealed by any party to the employment appeal board created in section 10A.601. The decision of the appeal board is final agency action and an appeal of the decision shall be made directly to the district court.

Iowa Admin. Code r. 871-24.19(1) provides:

Determination and review of benefits rights.

(1) Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. Such notice to the claimant shall advise of the weekly benefit amount, duration of benefits, wage records, other data pertinent to benefit rights, and if disqualified, the time of and reason for such disqualification. If a claimant is ineligible, such claimant shall be advised of such ineligibility and the reason therefor. Each notice of benefit determination which the department is required to furnish to the claimant shall, in addition to stating the decision and its reasons, include a notice specifying the claimant's appeal rights. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

Iowa Admin. Code r. 871-24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same

separation has been made on a prior claim by a representative of the department and such decision has become final.

No disqualification is imposed if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final. Iowa Admin. Code r. 871-24.28(6) and 871-24.19(1). Inasmuch as the current decision is in conflict with the prior claim year decision that did not charge the employer's account for benefits, the current decision is modified in favor of the appellant.

**DECISION:**

The July 26, 2018, reference 01, unemployment insurance decision is modified in favor of the appellant. The prior decision on the separation allowing benefits, provided the claimant is otherwise eligible, remains in effect and the account of the employer shall not be charged.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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