

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KURTIS M MCGRANE

Claimant

APPEAL 16A-UI-08797-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DENVER CONSTRUCTION INC

Employer

OC: 07/17/16

Claimant: Respondent (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)i – Voluntary Quitting/Business Sale
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 August 2, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 30, 2016. The claimant Kurtis McGrane did not participate. The employer Denver Construction Inc. participated through attorney Bradley Strouse and witness Patricia Buss. Official notice was taken of the administrative record.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Did the claimant continue working for the acquiring or successor employer?

Has the claimant been overpaid unemployment insurance benefits?

Can the repayment of those benefits to the agency be waived?

Can 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: Claimant was employed full time as a driver from January 11, 2016, until this employment ended on June 30, 2016. The employer sold its business to Rite-Environmental on June 30, 2016. The claimant continued working for the new employer until July 17, 2016. That subsequent separation has been determined by the Benefits Bureau in the unemployment insurance decision dated August 10, 2016, (reference 03).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant continued working for the acquiring employer.

Iowa Code § 96.5(1)i provides:

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:

i. The individual is unemployed as a result of the individual'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. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of § 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The claimant was employed by this company, which was sold, and continued employment with the new employer. Accordingly, benefits are allowed, provided the claimant is otherwise eligible, and the account of this former employer shall not be charged. Additionally, as benefits are allowed, the issues of overpayment and repayment are moot.

DECISION:

The August 2, 2016, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant continued working for the new owner of the business and was subsequently separated. Benefits are allowed, provided the claimant is otherwise eligible. The account of this former employer (account number 053836-000) shall not be charged. The issues of overpayment and repayment are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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