

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**GERALYN A RATZLAFF
803 MARKET
HARLAN IA 51537**

**PRAVIN R PATEL
D/B/A 59'ERS MOTEL
1148 HWY 59 N
HARLAN IA 51537**

**Appeal Number: 05A-UI-00754-RT
OC: 08-22-04 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-4 – Required Findings (Monetarily Eligible for Benefits)

STATEMENT OF THE CASE:

The claimant, GERALYN A. Ratzlaff, filed a timely appeal from an unemployment insurance decision dated January 19, 2005, reference 05, denying unemployment insurance benefits to her because she voluntarily quit her part-time employment on August 16, 2004 and has insufficient wages earned with other employers on her claim for benefits to be eligible for unemployment insurance benefits. After due notice was issued, a telephone hearing was held on February 15, 2005, with the claimant participating. Pravin R. Patel, doing business as 59'ers Motel, participated in the hearing on his own behalf. Barshan Bhevsar was available to testify for the employer but not called because his testimony would have been unnecessary. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant. This matter was originally scheduled for a telephone hearing on February 7, 2005 at 1:00 p.m. and rescheduled at the employer's request.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant voluntarily left her employment with the employer herein on August 16, 2004. That separation was determined to be disqualifying in appeal number 04A-UI-13488-CT, by decision by the administrative law judge dated January 14, 2005, at reference 01, reversing a decision by an authorized representative of Iowa Workforce Development dated December 8, 2004, at reference 01, allowing benefits to the claimant. That decision does not appear to have been appealed to the Employment Appeal Board. Since the claimant's employment with the employer was part time, the administrative law judge remanded this matter for an investigation and determination as to whether the claimant was otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers according to 871 IAC 24.27. An authorized representative of Iowa Workforce Development issued a decision dated January 19, 2005, at reference 05, determining that the claimant was not eligible to receive unemployment insurance benefits because she had insufficient wages earned with other employers on her unemployment insurance claim. This is the decision from which the claimant appeals and presents the only issue (other than an overpayment) to administrative law judge, namely, whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits based on wages paid by other base period employers, excluding the wages paid by the employer herein. The claimant has not worked for the employer since August 16, 2004 when she was separated by a voluntary quit, and which separation was determined in appeal number 04A-UI-13488-CT. The only other wages in the claimant's base period for her claim effective August 22, 2004, are \$296.00 in the second quarter of 2003 from Westmont Care Center, Inc. and \$131.88 in the third quarter of 2003 from Colonial Manor of Manilla. Pursuant to her claim for unemployment insurance benefits filed effective August 22, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,164.46 as follows: \$86.00 per week for 13 weeks from benefit week ending August 28, 2004 to benefit week ending November 20, 2004, and \$46.46 for benefit week ending November 27, 2004. These benefits exhausted the claimant's unemployment insurance benefits for benefit year effective August 22, 2004. This amount is presently shown as overpaid and is also the subject of this appeal.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is eligible to receive unemployment insurance benefits because she is otherwise monetarily eligible for unemployment insurance benefits based on wages paid by other base period employers, excluding the employer herein. The claimant is not otherwise eligible to receive unemployment insurance benefits.
2. Whether the claimant is overpaid unemployment insurance benefits. The claimant is overpaid unemployment insurance benefits in the amount of \$1,164.46.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and

the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Iowa Code Section 96.4-4 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

The administrative law judge concludes, that the separation from the employer herein on August 16, 2004 has already been adjudicated in appeal number 04A-UI-13488-CT. In that appeal the administrative law judge determined that the claimant had voluntarily left her employment for no good cause attributable to the employer and this would be a potentially disqualifying separation. However, the judge determined that the claimant's employment was part time and the matter was remanded to Claims for determination as to whether the claimant is otherwise monetarily eligible for unemployment insurance benefits based on wages paid by other base period employers, excluding the employer herein. That decision does not appear to have been appealed to the Employment Appeal Board and is therefore binding on the administrative law judge now. The claimant testified that she believed she had appealed that decision to the Employment Appeal Board. The administrative law judge informed the claimant that she needed to contact the Employment Appeal Board to see if and when she had appealed that decision and the status of her appeal, if any. Nevertheless, the administrative law judge is bound by that decision, and the only issue before the administrative law judge now is whether the claimant is otherwise monetarily eligible to receive unemployment insurance benefits (other than the overpayment issue). The administrative law judge concludes that she is not.

Iowa Workforce Development records show earnings from other employers in the claimant's base period for her claim filed effective August 22, 2004 as follows: \$131.88 for the third quarter of 2003 from Colonial Manor of Manilla and \$296.00 in the second quarter of 2003 from Westmont Care Center, Inc. The claimant agreed that these were the only other earnings in her base period. The administrative law judge concludes that these earnings are insufficient to entitle the claimant to receive unemployment insurance benefits or to establish that the claimant is eligible to receive unemployment insurance benefits. The claimant has not been paid wages in her highest quarter for insured work totaling 3.5 percent of the statewide average annual wage for insured work for the calendar year 2003 ($\$30,493.55 \times .035$ rounded to \$10.00 or \$1,070.00) and, further, the claimant has not been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the claimant's wages were highest, in a calendar quarter other than the calendar quarter in which the claimant's wages were highest. The claimant's wages were highest in the calendar quarter for the second quarter of 2003 in the amount of \$296.00 and one-half of this amount is \$148.00, and this is less than the amount of the claimant's wages in the other calendar quarter for which she had wages, the third quarter of 2003, in the amount of \$131.88. Accordingly, the administrative law judge concludes that the claimant is not otherwise monetarily eligible to receive unemployment insurance benefits after excluding the wages from the employer herein. Therefore, the administrative law judge concludes that the claimant is not entitled to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until and unless she requalifies for such benefits.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,164.46 since separating from the employer herein on or about August 16, 2004 and filing for benefits effective August 22, 2004. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision dated January 19, 2005, reference 05, is affirmed. The claimant, Geralyn A. Ratzlaff, is not entitled to receive unemployment insurance benefits because she is not otherwise monetarily eligible for unemployment insurance benefits based on wages paid by other base period employers, after excluding wages paid from the employer herein. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,164.46.

b/kjf