

**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**

**SANDY S FELKE
304 HWY 9 W
DECORAH IA 52101**

**NORDIC EXPRESS INC
405 OAK ST
DECORAH IA 52101**

**Appeal Number: 05A-UI-08082-CT
OC: 12/05/04 R: 04
Claimant: Respondent (2)**

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 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Nordic Express, Inc. filed an appeal from a representative's decision dated July 28, 2005, reference 01, which held that no disqualification would be imposed regarding Sandy Felke's separation from employment. After due notice was issued, a hearing was held by telephone on August 23, 2005. Ms. Felke participated personally. The employer participated by Dwayne Lundtvedt and Lisa Lundtvedt, Owners. Exhibits One and Two were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: On November 1, 2002, Dwayne and Lisa Lundtvedt, as Nordic Express, Inc., purchased a Conoco gas station. Attached to the station was a restaurant known as Burl's, Inc. The restaurant was owned and operated by Keri Felke and Sandy Felke, daughter and mother. They paid unemployment insurance on wages earned by them in the business. The Felkes leased the restaurant space from Nordic Express, Inc. The lease agreement signed on November 1, 2002 expired on October 31, 2004.

When their lease was up for renewal, the Felkes decided to leave the food service business and opted to sell Burl's, Inc. They had operated the business for two and one-half years as equal partners. Keri Felke was President of the corporation and Sandy Felke was Vice President. They made a joint decision to sell the business. On November 5, 2004, the Felkes signed a purchase agreement to sell the business to the Lundtvedts. The restaurant was in excellent financial condition at the time of the sale. The purchase agreement stipulated that the Felkes would provide three weeks of on-site training to the Lundtvedts on the operation of the business.

Sandy Felke subsequently filed a claim for job insurance benefits effective December 5, 2004. She has been paid a total of \$7,750.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Felke was separated from employment for any disqualifying reason. She became unemployed when she sold the business in which she was one of two owners. The business was in excellent financial condition at the time of the sale and, therefore, there was no financial compulsion to sell. The sale was due solely to the fact that the Felkes wanted to go into different lines of work. Because the decision to sell was purely voluntary, Ms. Felke chose to be unemployed. She knew she would not have employment after the sale. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Felke's unemployment was due to her own decision to sell the business and not to any actions on the part of the Lundtvedts.

The administrative law judge has considered whether Iowa Code section 96.5(1)i is applicable to the facts of the case at hand.

Iowa Code section 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 section 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The provisions of section 96.5(1)i are only applicable where the sale involves a "clearly segregable and identifiable part of the employer's business." In Ms. Felke's case, the sale involved the entirety of the business, not a portion of it. Therefore, section 96.5(1)i is not applicable.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Felke was voluntarily unemployed for no good cause attributable to the employer. The administrative law judge appreciates the fact that she paid unemployment insurance on her wages earned in Burl's, Inc. However, the law still provides that she must be unemployed through no fault of her own in order to receive job insurance benefits. For the reasons cited herein, Ms. Felke was not entitled to job insurance benefits based on her voluntary unemployment.

Ms. Felke has received benefits since filing her claim effective December 5, 2004. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated July 28, 2005, reference 01, is hereby reversed. Ms. Felke voluntarily left employment for no good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Felke has been overpaid \$7,750.00 in job insurance benefits.

cfc/kjw