

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER L BAILEY

Claimant

KRAFT HEINZ FOODS COMPANY LLC

Employer

APPEAL 21A-UI-06537-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20

Claimant: Respondent (3)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
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
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On March 29, 2021, Kraft Heinz Foods Company, LLC (employer) appeared for a hearing for the appeal they filed on January 22, 2021, from the January 12, 2021, reference 04, unemployment insurance decision for the November 10, 2019 claim year, that allowed benefits based upon the determination Jennifer L. Bailey (claimant) was not discharged for a current act of misconduct. The parties were properly notified about the hearing held by telephone on March 29, 2021. During the hearing, it was discovered that the separation issue spanned two claim years. The agency issued a decision on January 21, 2021, reference 01, for the November 8, 2020 claim year, addressing the same separation and allowing benefits for a different reason. For administrative efficiency, the second decision was set up for appeal, and it was consolidated with the hearing for appeal 21A-UI-03555-SC-T. The claimant participated personally. The employer participated through Lia Kaskadden, Maintenance Supervisor. Rod Warhank, Human Resources, was sworn in as a witness for the employer, but he did not testify. The Employer's Exhibits 1 and 2 were admitted into the record.

ISSUES:

Is the employer's appeal timely?

Was the separation adjudicated in a prior claim year?

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from full-time employment on November 3, 2020, when she was discharged. She reactivated the November 10, 2019, claim for unemployment insurance benefits one week before the claim expired. The claimant was allowed benefits based on the separation in the unemployment insurance decision dated January 12, 2021, reference 04. That decision was reversed by the administrative law judge in the decision for appeal 21A-UI-03555-SC-T.

The claimant filed a new claim for unemployment insurance benefits effective November 8, 2020. The claimant has received \$3,451.00 in unemployment insurance benefits for the seven weeks between November 8 and December 26. On January 21, 2021, the agency issued the reference 01 unemployment insurance decision, for the 2020 benefit year that allowed benefits based on the same separation but for different reasons. The administrative record shows the agency did not contact the employer for the fact-finding interview.

The unemployment insurance decision issued on January 21 was sent to the employer's address of record, but it was not received. The first notice the employer had of the decision made for the 2020 claim year was during the hearing for appeal 21A-UI-03555-SC-T.

After the hearing was held, but before the ALJ's decision was issued, the agency issued another unemployment insurance decision dated April 1, 2021, reference 04, which amended the decision issued January 21, 2021, reference 01, finding the separation was previously adjudicated and denying unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

I. Is the employer's appeal timely?

For the reasons that follow, the administrative law judge finds the employer's appeal timely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the

specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The employer did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer indicated their intent to appeal upon learning of the decision. Therefore, the appeal shall be accepted as timely.

II. Was the claimant discharged for disqualifying job-related misconduct? Has the issue been previously adjudicated?

For the reasons that follow, the administrative law judge concludes the separation at issue was previously adjudicated in a prior claim year and the initial unemployment insurance decision has been amended to support the disqualification. Benefits are denied.

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 benefit 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 benefits 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 other such 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.

No disqualification is imposed if a decision on this same separation has been made on a prior claim by a representative of the department. Iowa Admin. Code r. 871-24.28(6-8) and 871-24.19(1). Inasmuch, as the issue presented was resolved in a prior claim year, the current decision as amended, referring to the prior claim year decision for the same separation date, is affirmed.

III. Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

For the reasons that follow, the administrative law judge concludes that the claimant has been overpaid benefits, but she does not have to repay those benefits because the employer did not participate in the fact-finding interview. Additionally, the employer's account will not be charged because they did not pay insured wages to the claimant during the base period and they did not participate through no fault of their own.

Iowa Code section 96.3(7)a, b, as amended in 2008, provides:

Payment – determination – duration – child support intercept.

7. Recovery of overpayment of benefits.

a. 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.

b. (1) (a) 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 employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may

be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871-subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Because the claimant's separation was disqualifying, benefits were paid to which she was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code § 96.7. However, when the overpayment is the result of a reversal of an initial determination to award benefits based on the claimant's separation, the overpayment will not be recovered if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. Iowa Admin. Code

r. 871-24.10(1). The employer will not be charged for benefits if it is determined that they did participate in the fact-finding interview. Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

In this case, the claimant received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the agency the benefits she received. However, the employer's account shall not be charged because the employer is not a base period employer and they did not participate in the fact-finding through no fault of their own, specifically the agency did not call them for the fact-finding interview.

DECISION:

The employer's appeal is timely. The January 21, 2021, reference 01, unemployment insurance decision is further modified in favor of the respondent. The decision was amended by the agency on April 1, 2021, reference 04, finding the claimant's separation was disqualifying, which is consistent with the prior adjudication of the separation. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The claimant has been overpaid \$3,451.00 for the current claim year. The claimant does not have to repay those benefits because the employer did not participate in the fact-finding interview. The employer's account shall not be charged because the employer is not a base period employer and they did not participate in the fact-finding through no fault of their own.



Stephanie R. Callahan
Administrative Law Judge

April 8, 2021
Decision Dated and Mailed

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