

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW S OSBOURN
Claimant

APPEAL 17A-UI-04522-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI CITY ELECTRIC CO OF IOWA
Employer

OC: 04/02/17
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-23.43(9)a – Combined Wage Claim Transfer of Wages

STATEMENT OF THE CASE:

The employer filed an appeal from the April 17, 2017, (reference 01) unemployment insurance decision that denied the employer's request for a relief of charges. The parties were properly notified of the hearing. A telephone hearing was held on June 1, 2017. The claimant participated and testified. The employer participated through Human Resource Assistant Nicole Leyendecker. General Foreman Alex Hunemuller was also present on behalf of the employer but did not testify. Employer's Exhibit 1 was received into evidence.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Can the Iowa employer can be relieved of benefit charges on the combined wage claim?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a journeyman wireman from July 15, 2016, until this employment ended on July 20, 2016, when he was discharged after failing to successfully complete a background check.

The employer was sent a Notice of Claim on April 19, 2017, but did not file a protest until May 2, 2017. The unemployment insurance decision that allowed benefits based on the employer's failure to file a timely protest regarding the separation was affirmed in a decision of the administrative law judge in appeal 17A-UI-05168-NM-T.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes she lacks jurisdiction to make a determination on the claimant's separation from employment and the employer is not relieved of benefit charges.

Iowa Admin. Code r. 871-23.43(9)(a) provides, in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

Since the decision finding the employer's protest to be untimely has been affirmed, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990). Since employer cannot be relieved of charges based upon the decision of the fact finder regarding the separation, it shall be not be relieved of charges on this combined wage claim.

DECISION:

The April 17, 2017, (reference 01) unemployment insurance decision is affirmed, and the decision of the representative shall stand and remain in full force and effect. The employer is not relieved of charges.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs