

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ONTARIO WHITESIDE**

Claimant

**APPEAL 21A-UI-15366-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASTERSON PERSONNEL INC**

Employer

**OC: 04/18/21**

**Claimant: Appellant (1R)**

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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 – Previous Adjudication

**STATEMENT OF THE CASE:**

The claimant/appellant filed a timely appeal from the June 28, 2021 (reference 03) unemployment insurance decision that denied benefits to the claimant finding that a disqualifying separation from employment had already been adjudicated in a previous claim year and still existed to date. After due notice was issued, a telephone hearing was held on August 31, 2021. The claimant participated personally. The employer participated through witness Jim Robertson. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-15356-DB-T and 21A-UI-15362-DB-T.

**ISSUES:**

Was the separation adjudicated in a prior claim year?

Was the issue adjudicated in a prior representative's decision?

**FINDINGS OF FACT:**

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits with an effective date of April 19, 2020.

An unemployment insurance benefits decision was issued on May 10, 2021 (reference 16) that found the claimant's separation from employment with this employer occurred on August 12, 2020 and was disqualifying.

Another unemployment insurance benefits decision was issued on June 11, 2021 (reference 08) that found the claimant's separation from employment with this employer occurred on February 8, 2021 and was disqualifying. Both decisions were appealed by the claimant but the appeals were untimely and the underlying decisions were affirmed due to the administrative law judge's lack of jurisdiction in Appeal No. 21A-UI-15362-DB-T and 21A-UI-15356-DB-T.

Both parties testified that the claimant's most recent period of employment occurred from August 7, 2020 through August 12, 2020 when he was placed as a temporary employee at Ladawn. Both parties agreed, and claimant's administrative records confirm, that the claimant did not work for this employer in 2021.

Claimant filed another original claim in a subsequent benefit year effective April 18, 2021. Claimant's testimony and the wage history establishes that the claimant may have worked and earned insured wages with another employer, Masterbrand Cabinets Inc., after his disqualifying separation from employment with this employer on August 12, 2020. The requalification issue will be remanded to the Benefits Bureau of Iowa Workforce Development for a determination whether a ten times allowance decision may be issued regarding the claimant's separation from employment with this employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.6(3) provides:

#### 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 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 Code section 96.5(1)g provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.19(1) provides:

Determination and review of benefit rights.

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 benefit 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 of taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any such other 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.

Iowa Admin. Code r. 871-24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

If a disqualifying decision on the same separation has been made on a prior claim by a representative of the department and such decision has become final, it remains in effect until the claimant has earned ten times his weekly-benefit amount in insured wages since that disqualifying separation from employment. Iowa Code § 96.5(1)g; Iowa Admin. Code r. 871-24.28(6-8) and Iowa Admin. Code r. 871-24.19(1).

However, in this case, the Benefits Bureau issued two decisions regarding the claimant's separation from employment which are contradictory to each other. The June 11, 2021 (reference 08) decision found that the claimant voluntarily quit work on February 8, 2021 and the May 10, 2021 (reference 16) decision found that the claimant voluntarily quit work on August 12, 2020. As such, the correct separation date must be established by the Benefits Bureau and this matter will be remanded for review regarding the correct separation from employment date. If it is determined that the correct date of separation from employment was August 12, 2020, as both parties testified to in the hearing, then the June 11, 2021 (reference 08) decision should be declared null and void and the June 28, 2021 (reference 03) decision should be amended to reflect the corrected separation from employment date.

Further, it appears that the claimant may have earned sufficient insured wages since his disqualifying separation from employment with this employer to re-qualify for benefits if his separation date was in fact August 12, 2020. That matter will be remanded to the Benefits Bureau for review and determination. Because this separation issue presented was in a prior claim year, the current decision, referring to the same separation from employment, must be affirmed, pending the remanded issues.

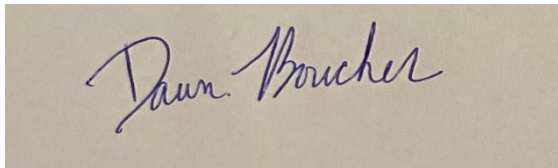
**DECISION:**

The June 28, 2021 (reference 03) decision is affirmed, pending the remanded issues. The claimant's voluntary quitting of work with this employer was found to be disqualifying in a previous claim year and the issue was previously adjudicated by virtue of the June 11, 2021 (reference 08) and May 10, 2021 (reference 16) decisions. However, both decisions list different separation dates and both parties agree the claimant did not work for this employer in 2021.

**REMAND:**

The claimant's correct separation from employment date shall be established by the Benefits Bureau upon remand. If it is determined that the correct date of separation from employment was August 12, 2020, as both parties testified to in the hearing, then the June 11, 2021 (reference 08) decision should be declared null and void and the June 28, 2021 (reference 03) decision should be amended to reflect the corrected separation from employment date.

Further, if the August 12, 2020 separation date is correct, the Benefits Bureau shall determine whether the claimant has worked and earned sufficient wages to requalifying for benefits since his August 12, 2020 disqualifying separation from employment as he earned wages from Masterbrand Cabinets Inc. in the fourth quarter of 2020.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

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Dawn Boucher  
Administrative Law Judge

September 8, 2021  
Decision Dated and Mailed

db/scn