

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**BRIANNE J FORBES**  
Claimant

**APPEAL NO. 10A-UI-17148-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**OC: 05/16/10**  
**Claimant: Respondent (4-R)**

Section 96.7 – Employer Liability  
Section 96.6 – Notification of Interested Parties

**STATEMENT OF THE CASE:**

Thomas L. Cardella & Associates, Inc., filed a timely appeal from the December 10, 2010, reference 03, decision that allowed benefits in connection with an October 4, 2010 separation and that concluded that Thomas L. Cardella & Associates' account could be charged for benefits paid to the claimant based on the separation. After due notice was issued to the claimant, to Thomas L. Cardella & Associates, Inc., and to TM1 Stop, L.L.C., a hearing was held on March 15, 2011. The claimant participated. Steve Brown, vice president of finance, represented Thomas L. Cardella & Associates, Inc. TM1 Stop, L.L.C., did not respond to the hearing notice directed to them. Exhibits D-1 through D-4 were received into evidence. The administrative law judge took official notice of Workforce Development administrative records concerning the employer account numbers of the two businesses and any linked accounts.

**ISSUES:**

Whether Thomas L. Cardella & Associates, Inc., is the correct employer in interest in connection with the December 10, 2010, reference 03, decision concerning a separation that occurred on or about October 4, 2010.

Whether Thomas L. Cardella & Associates, Inc., may be relieved of liability for benefits paid to the claimant.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Brianne Forbes was employed by Thomas L. Cardella & Associates, Inc., (employer account number 351867) until May 19, 2010, when she was discharged from that employment. In connection with that separation, Ms. Forbes established a claim for unemployment insurance benefits that was effective May 16, 2010. On June 10, 2010, a Workforce Development representative entered a June 10, 2010, reference 01, decision that allowed benefits and that indicated Thomas L. Cardella & Associates, Inc., could be charged for benefits. The June 10, 2010, reference 01, decision became a final Agency decision and is binding on the parties.

In August 2010, Ms. Forbes commenced working for TM1 Stop, L.L.C. (employer account number 325668). Ms. Forbes separated from that employment on or about October 4, 2010. In connection with that separation, Ms. Forbes established an additional claim for benefits that was effective November 14, 2010. At the time Ms. Forbes established the additional claim, she provided erroneous information to Workforce Development concerning who her last employer was. Ms. Forbes was under the erroneous belief that she had been a Thomas L. Cardella & Associates employee while she performed work for TM1 Stop, L.L.C.

Based on the erroneous information provided by Ms. Forbes, Workforce Development sent a notice of claim to Thomas L. Cardella & Associates and did not send a notice of claim to TM1 Stop, L.L.C. On December 10, 2010, a Workforce Development representative entered a December 10, 2010, reference 03, decision that allowed benefits in connection with the October 4, 2010 separation and concluded that Thomas L. Cardella & Associates, Inc., could be charged for benefits paid to the claimant.

Thomas L. Cardella & Associates, Inc. (employer account number 351867), and TM1 Stop, L.L.C. (employer account number 325668), are separate businesses. Indeed, the two companies compete for the same telephone sales business. There is no common ownership between the two businesses. Workforce Development records for TM1 Stop, L.L.C., indicate that that business is not linked with any other for unemployment insurance purposes.

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

The Claims Division at Workforce Development is charged with promptly notifying all interested parties to a claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. See Iowa Code section 96.6(2). The process presumes the Claims Division representative will be able to identify the correct employer(s) in interest. If the Claims Division relies exclusively on information provided by the claimant about who their most recent employer was, without any additional investigation, it is entirely possible that the Claims Division may on occasion misidentify the appropriate employer in interest. That is what happened here. The evidence in the record establishes that Ms. Forbes did not work for Thomas L. Cardella & Associates, Inc.—directly or indirectly—after she separated from that employer in May 2010. The weight of the evidence establishes that TM1 Stop, L.L.C., was the employer from whom Ms. Forbes separated in October 2010. Thomas L. Cardella & Associates, Inc., is hereby removed as the employer of interest for purposes of the December 10, 2010 decision. This matter will be remanded to the Claims Division so that a notice of claim may be mailed to TM1 Stop, L.L.C., and so that a fact-finding interview concerning the correct parties in interest may occur.

Thomas L. Cardella & Associates, Inc., was deemed liable for benefits as part of the June 10, 2010, reference 01, decision regarding the May 19, 2010 separation. That decision continues to be binding upon the employer. Thus, Thomas L. Cardella & Associates, Inc., as a base period employer previously deemed liable for benefits, may indeed be charged for benefits paid to the claimant in connection with the claim year that started May 16, 2010 and that will end on or about May 15, 2011. But, Thomas L. Cardella & Associates' liability for benefits will not be based on any wage credits Ms. Forbes earned through the employment with TM1 Stop, L.L.C.

**DECISION:**

The Agency representative's December 10, 2010, reference 03, decision is modified as follows. TM1 Stop, L.L.C. (employer account number 325668) was the employer from which the claimant separated in October 2010 and the correct employer in interest for purposes of the December 10, 2010, reference 03, decision. Thomas L. Cardella & Associates, Inc. (employer account number 351867), was erroneously named as the employer of interest for purposes of the December 10, 2010, reference 03, decision and is hereby removed as the employer of interest for purposes of that decision. Because the process that led to the December 10, 2010, reference 03, decision was fundamentally flawed, that decision is hereby nullified.

Thomas L. Cardella & Associates, Inc., as a base period employer previously deemed liable for benefits, may indeed be charged for benefits paid to the claimant in connection with the claim year that started May 16, 2010 and that will end on or about May 15, 2011. But, Thomas L. Cardella & Associates' liability for benefits will not be based on any wage credits the claimant earned through the employment with TM1 Stop, L.L.C.

The matter is remanded to the Claims Division so that a notice of claim may be mailed to TM1 Stop, L.L.C., and so that a new fact-finding interview concerning the correct parties in interest may occur. The correct parties in interest will have appeal rights in connection with the new decision resulting from the new fact-finding interview.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw