

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE GONZALEZ
Claimant

APPEAL NO: 12A-UI-05637-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AD VENTURES LLC
Employer

OC: 01/22/12
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Ad Ventures, LLC (employer) appealed an unemployment insurance decision dated May 3, 2012, reference 02, which held that Nicole Gonzalez (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2012. The claimant participated in the hearing. The employer participated through Owner Norb Dams. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant and her husband owned a company named N & D Holdings, which they voluntarily sold on January 25, 2011 to Norb Dams, who named the company Ad Ventures, LLC. The entire company was sold and Mr. Dams purchased 100 percent of the claimant's assets. She denied having any financial problems prior to the sale and testified that the company was sold for personal reasons and due to a business opportunity. The claimant did not work for Ad Ventures and there was no discussion about her working for Ad Ventures.

The claimant filed a claim for unemployment insurance benefits effective January 22, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be addressed is whether the claimant's separation from employment was disqualifying or not. The claimant made a comment in the hearing that she was an employee of the former business and is therefore eligible for benefits. That is not the issue to be decided in this case. Before an employee can receive unemployment insurance benefits, he or she must meet the basic eligibility requirements. After these basic requirements have been met, he or she still has to qualify for benefits, which in this case, is determined by what prompted the final separation.

Iowa Code § 96.5(1) provides that an individual shall be disqualified for benefits if the individual has left work voluntarily without good cause attributable to the individual's employer. Iowa Code § 96.5(1)(i) states that an individual shall not be disqualified if the individual's employer sells or transfers part of its business to another employer and the individual becomes unemployed due to the failure of the new employer to offer the individual suitable work. Iowa Code § 96.5(1)(i) does not apply in the case herein, because the sale involved the entirety of the business, not a portion of it. Additionally, there was no discussion of the claimant working for the new owner, since they moved away after the sale of the company.

The evidence establishes the claimant voluntarily agreed to sell her business on January 25, 2011 and effectively caused her own separation. She was not compelled to sell her business, but simply chose to sell it for personal reasons. Unlike the business owner in *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993), the claimant's business was not facing a forced sell or near certain bankruptcy. As a result of her decision to sell her company, the claimant had no employment, and the law still provides that she must be unemployed through no fault of her own in order to receive job insurance benefits.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden. Benefits are therefore denied from January 25, 2011.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated May 3, 2012, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer and benefits are denied. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw