

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALICE L MOORE
Claimant

BLACK HAWK COUNTY
Employer

APPEAL 20A-UI-00907-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/20/19
Claimant: Respondent (1R)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed a timely appeal from the unemployment insurance decision dated January 27, 2020 (reference 07). The parties waived due notice and a telephone hearing was held on February 12, 2020. The claimant participated personally. The employer participated through witness Amanda Fesenmeyer. The hearing was consolidated with Appeal No. 20A-UI-00787-DB-T. The administrative law judge took official notice of the claimant's unemployment insurance benefits records, including the employer's statement of protest submitted through the SIDES system.

ISSUES:

Was the claimant laid off due to lack of work?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operated a nursing home facility which the claimant was employed at full-time as a developmental aide. She began working for this employer on May 3, 2004 and her employment ended on December 31, 2018 because the employer sold the nursing home facility to a private entity, named Pritok Capital LLC a/k/a Black Hawk Nursing and Rehab and d/b/a Country View Nursing Facility ("Black Hawk Nursing and Rehab") (employer account 612138). Claimant accepted employment with Black Hawk Nursing and Rehab as a developmental aide and began working for this employer on January 1, 2019. The claimant's hourly rate of pay was reduced from \$17.36 to \$15.31 per hour when she began working for Black Hawk Nursing and Rehab. Claimant worked and earned wages from Black Hawk Nursing and Rehab.

Claimant's administrative records establish that no fact-finding interview was conducted by Iowa Workforce Development regarding the claimant's separation from employment with this employer prior to this decision being entered. The employer's statement of protest stated that

“Black Hawk County sold the Country View Care Facility where Alice had worked, to a private company at the end of 2018 (12/31/2018). The new company, Pritok Capital LLC, took over operations on 1/1/19 and Alice went to work for the new owner.” The claimant has received benefits of \$6,569.00 since filing her original claim for benefits effective October 20, 2019.

The issue of whether the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph “b” allowing relief of charges under Iowa Code § 96.5(1)i has not yet been determined by the Iowa Workforce Development Tax Bureau and will be remanded for an investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1)i provides:

Causes for disqualification. 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:

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer **shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph “b”**. Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(emphasis added).

The claimant did not voluntarily quit her employment in order to work at Black Hawk Nursing and Rehab. Her employment with this employer ended because the employer sold the nursing home facility to a third party. However, claimant worked in and was paid wages for work with the acquiring employer. The claimant was laid off due to lack of work from this employer, Black Hawk County. Benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment is moot.

The employer's account may be charged for benefits paid, pending an investigation by Iowa Workforce Development Tax Bureau of whether the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of Iowa Code § 96.7(2)(b) allowing relief of charges under Iowa Code § 96.5(1)i.

DECISION:

The decision dated January 27, 2020 (reference 07) is affirmed, pending the remanded issue as delineated in the findings of fact. The claimant was laid off on December 31, 2018 due to lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The claimant is not overpaid benefits due to this separation of employment. The employer's account may be charged for benefits paid, pending the remanded issue as delineated in the findings of fact.

REMAND:

The issue of whether the acquiring employer (Black Hawk Nursing and Rehab) (employer account 612138) has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph "b" allowing relief of charges under Iowa Code § 96.5(1)j will be remanded to the Iowa Workforce Development Tax Bureau for an investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn