

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHARA N BESELER MULLER
309 N MAIN ST
MAQUOKETA IA 52060

ARH INC
EMPLOYMENT SOURCE
1815 GRANT ST
BETTENDORF IA 52722

Appeal Number: 04A-UI-00115-BT
OC: 06/30/02 R: 04
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.7-2-a(6) – Appeal from Quarterly Statement of Charges
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employment Source (claimant) appealed from the third quarter 2003 statement of charges, indicating that the employer's account was being charged for benefits paid to Shara Beseler Muller (claimant). As a result, a decision was issued on December 24, 2003, reference 01, which held that the claimant was eligible for unemployment insurance benefits. The employer appealed the decision and after hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2004. The claimant participated in the hearing. The employer participated through Annette Snyder, President. The parties waived formal notice so as to address the separation and the quarterly statement of charges issues.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant re-filed a claim for unemployment benefits with an effective date of December 8, 2002. Notification of the filing of the claim was mailed to the employer but since the notice of claim listed the claimant's name as Shara Muller instead of Shara Beseler, the employer answered that no one by that name had worked for the employer. The claimant's benefit year expired so she filed a new claim with an effective date of June 29, 2003.

The third quarter 2003 statement of charges was mailed to the employer and was received. The employer notified Iowa Workforce Development on November 10, 2003 that the original notice of claim had not been received and protested the payment of benefits to the claimant. The employer's appeal to the quarterly statement of charges was timely.

The employer is a placement firm. It offered the claimant placements on December 23, 2003, January 6, 2003, and February 13, 2003. The claimant interviewed for all three but was only offered the February 2003 position. The claimant accepted and subsequently refused that offer due to returning to work with her previous employer. On February 13, 2003, the claimant advised the employer to remove her from its availability list, which the employer did. The claimant's position with her former employer fell through.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the 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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code Section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The employer did not know the claimant had filed for benefits as the claimant's name had changed. Therefore, the employer could not respond in a timely manner. However, it did receive the quarterly statement of charges and responded promptly. The administrative law judge concludes the protest shall be accepted as timely.

The next issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code Sections 96.5-1. For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment to accept employment elsewhere.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment. Accordingly, benefits are allowed and the employer's account shall not be charged.

DECISION:

The employer's protest shall be accepted as timely. The unemployment insurance decision dated December 24, 2003, reference 01, is modified in favor of the appellant. The claimant voluntarily left her employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged.

sdb/b