

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE A SANCHEZ RAMIREZ
Claimant

APPEAL NO. 12A-UI-14600-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

T & C POULTRY
Employer

OC: 07/29/12
Claimant: Respondent (1)

871 IAC 24.19(1) – Determination of Review of Benefit Rights
871 IAC 24.28(6) – Prior Adjudication

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 26, 2012, reference 03, which held that the claimant was eligible for unemployment insurance benefits based on the separation of employment. After due notice, a telephone conference hearing was scheduled for and held on January 15, 2013. The claimant participated personally. The employer participated by Betty Thornberg, owner. The employer was represented by Mike Mahoney, attorney at law. Official notice is taken of agency records. Anna Pottebaum served as Spanish interpreter.

ISSUE:

The issue in this matter is whether the separation was adjudicated in a prior claim year.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

This case has an extremely complex procedural history. The claimant established an original claim for benefits with an original claim date of July 31, 2011, following a separation of employment from Tyson Foods. The claimant received unemployment insurance benefits. From September 21, 2011, through December 3, 2011, the claimant worked for T & C Poultry. He was paid wages of \$4,703.00. The claimant was terminated by T & C Poultry.

On February 16, 2012, a hearing was held before an administrative law judge concerning this claim. Two issues were present: whether the claimant has agricultural wages that are covered by the unemployment insurance system and whether the claimant was discharged for misconduct by T & C Poultry. The administrative law judge ruled that the claimant was not discharged for disqualifying misconduct. (12A-UI-00826-MT). However, the administrative law judge also ruled that the employer's account could not be charged because of its status as an agricultural employer. Neither the claimant nor the employer appealed this decision to the Employment Appeal Board (EAB) and the decision became final.

The claimant filed for a second year of benefits on July 29, 2012. The same two issues came up again, namely, whether the claimant was disqualified from receiving benefits based on the SEPARATION from T & Poultry and whether the employer's account could be charged. In the reference 03 decision, the representative held that the separation issue had already been ruled on in a prior claim. The representative also stated that T & C Poultry may be charged for benefits paid.

The representative issued a second decision, the reference 04 decision, which stated that the claimant's request to have wages added to his unemployment claim were denied because the wages were for agricultural labor and did not meet the definition of insured work. The result is that the employer's account could not be charged even though the representative's decision did not say this nor did the representative cite the prior administrative law judge decision.

The claimant is not receiving benefits at the present time because he has failed to qualify for a second benefit year.

REASONING AND CONCLUSIONS OF LAW:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision at issue has been adjudicated in a prior claim year and that decision has become final. (See appeal number 12A-UI-00826-MT).

It is important to remember that there two issues that were litigated before and decided by the administrative law judge in his decision filed on February 20, 2012. He decided that the claimant was not discharged for misconduct. That is the issue in this case (12A-UI-14599-VST)—whether the claimant's separation was a disqualifying event. That issue was decided in the claimant's favor and cannot be adjudicated again. Judge Mormann's decision is final. The second issue concerns whether the employer's account can be charged and that was previously decided by Judge Mormann in the employer's favor. That is the issue in 12A-UI-14600-VST. Thus as things stand now, the claimant was not discharged for misconduct. He is not entitled to have his wages paid by T & C Poultry added to his claim because they were in agricultural labor and do not meet the definition of insured work. This means that even though the separation was not disqualifying, the employer's account cannot be charged.

DECISION:

The decision of the representative dated October 26, 2012, reference 03, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs