

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

ROBERTA L HALE
1011 MCCLELLAN ST
TAMA IA 52339

SAC & FOX TRIBE
349 MESKWAKI RD
TAMA IA 52339-9634

Appeal Number: 04A-UI-06653-SWT
Social Security Number: 479-62-7567
OC 05/16/04 R 03
Claimant: Respondent (1)

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)

871 IAC 24.1(113) - Layoff

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 7, 2004, reference 01, that concluded the claimant was dismissed on October 10, 2004, due to a reduction in staff or elimination of her position. A telephone hearing was held on July 14, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Laurie Lasley-Santos participated in the hearing on behalf of the employer with a witness, Lucy Roberts.

FINDINGS OF FACT:

The claimant worked for the Meskwaki Tribal Casino from April 4, 1995 to May 23, 2003. Her wages were reported under the casino's unemployment account number 315506. In March 2003, a group of tribal members occupied the tribal offices and ousted the elected tribal

chairman, Alex Walker, Jr., and other council members. Homer Bear, Jr. led the insurgent group. The claimant was laid off due to lack of work when the casino was closed on May 23, 2003. The claimant filed a new claim for unemployment insurance benefits with an effective date of May 18, 2003. She began filing and receiving benefits.

The Walker group continued to be recognized by the Bureau of Indian Affairs as the tribal government and maintained control over the federal funds and contracts of the Tribe. On July 31, 2003, the claimant accepted employment with the Walker group as its temporary gaming commissioner. She worked in the position until October 10, 2003. The wages paid the claimant were reported under the Sac and Fox Tribe's unemployment account number 315507. In October 2003, new elections for the tribal council were held. The Walker group no longer had funds available to pay the claimant and her employment ended.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 16, 2004, after her previous benefit year ended. This claim is based on the wages reported by the Meskwaki Tribal Casino under unemployment account number 315506 and the wages reported by the Walker group under unemployment account number 315507. She has not been offered employment by the Sac and Fox Tribe or the Meskwaki Tribal Casino.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. On the other hand, 871 IAC 24.1(113)a provides: "A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations."

The claimant was laid off due to lack of work effective after October 10, 2003, because the Alex Walker, Jr. group could no longer pay her. She was not subject to disqualification at that point for quitting employment or being discharged for work-connected misconduct from employment. The employer brought up the fact that the claimant never reapplied for her gaming license. As neither the Tribe nor the Casino offered the claimant work, there is no basis for disqualifying a laid off worker for failing to apply for an occupational license. The claimant is qualified to receive benefits because none of the law's disqualification provisions apply.

The employer also argues that the payments made to the claimant by the Walker group were improperly made and reported under the Sac and Fox Tribe's unemployment insurance account number. The fact remains that these wages were reported to the Agency under the Tribe's unemployment insurance account and have not been removed. The Tribe's proper course of action if it believes that the Employer's Contribution and Payroll Reports were submitted erroneously would be to correct and resubmit those reports with an explanation as to why the reports should be corrected. If the employer is dissatisfied with the decision regarding the reporting of wages, it can then be appealed. The employer will remain liable for payments made to the claimant unless and until those wages are removed from the claim.

DECISION:

The unemployment insurance decision dated June 7, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/s