

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LATISHA T LAMAY
Claimant

APPEAL 18A-UI-02815-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOUBLE D SQUARED LLC
Employer

OC: 02/04/18
Claimant: Respondent (1)

Iowa Code § 96.5(1)i – Voluntary Quitting/Layoff - Business Sale
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 an appeal from the February 20, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2018. Claimant participated. Employer participated through Human Resource Manager Amanda Kelderman. Official notice was taken of the administrative record.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

The employer sold its business to FRG of Iowa, LLC (598445) on July 23, 2017. Claimant was separated from employment with this employer at that time. Kelderman testified the new employer indicated it would offer work to all current employees. Claimant testified she was not specifically offered work by the new employer and did not even realize the business had been sold. The claimant testified she believed she worked a few shifts at the business after July 23, 2017, but the administrative record does not show any wages earned from the new employer. The Iowa Workforce Development Tax Bureau has determined employer's experience rating will not be transferred to the new employer, FRG of Iowa.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 20, 2018. The claimant filed for and received a total of \$588.00 in unemployment insurance benefits for the weeks between February 4 and March 24, 2018. The employer did not participate in a fact finding interview regarding the separation on February 19, 2018, but testified it did not receive notice of the hearing. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was separated from employment due to employer's business being sold.

Iowa Code section 96.5(1)i provides:

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.

The claimant was employed by employer until its sale, and there is no record of her working for the new employer, nor was there sufficient evidence presented to show she was offered work from the new employer. Accordingly, benefits are allowed, provided claimant is otherwise eligible. The account of this former employer shall be charged. It should be noted the Tax Bureau has issued a decision identifying FRG of Iowa as a newly covered employer. Claimant testified she believed she performed work at the same business location after July 23, 2017. The administrative record does not show any wages earned by claimant from FRG of Iowa. If claimant believes the wages are missing from her wage record she may bring proof of those wages, such as a pay stub or W-2 form from FRG of Iowa to Iowa Workforce Development for an investigation into missing wages.

The claimant is qualified to receive benefits and has not been overpaid benefits. Therefore, any issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The February 20, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was separated through no fault of her own due to a sale of the business. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs