

in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department of unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant is and was, at all material times hereto, employed by the employer as a part-time on-call as needed substitute food service worker. The claimant is still on the employer's list for substitute food service workers. However, the last time the claimant actually worked for the employer was in the fourth quarter of 2004. Nevertheless, the claimant still remains on the substitute food service worker list and subject to call when needed. The claimant's employment with the employer has never changed. The employer is a community school district accredited as such by the State Department of Education. The 2005-2006 school year began August 29, 2005. The claimant had regular employment with Some Wear Special, Helen E. Seuntjens. From this employment the claimant earned \$1,415.00 in the fourth quarter of 2004; \$3,632.00 in the first quarter of 2005; and \$3,725.00 in the second quarter of 2005. The claimant also worked for that employer in the third quarter of 2004 until August 23, 2005 when the store where the claimant was employed closed. The claimant then filed for unemployment insurance benefits effective August 21, 2005 and received unemployment insurance benefits in the amount of \$1, 292.00 as follows: \$36.00 for benefit week ending August 27, 2005 (earnings \$160.00) and \$157.00 per week for eight weeks from benefit week ending September 3, 2005 to October 22, 2005.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant separated from her employment with the employer herein and, if so, whether the claimant's separation from her employment was disqualifying. The claimant has not separated from her employment from the employer herein and, as a consequence, she is not disqualified to receive unemployment insurance benefits.
2. Whether the claimant is in the employee of a base period employer and is receiving the same employment from the employer that she received during her base period, and therefore, the employer should not be charged for any benefits to which the claimant is entitled. The claimant is employed by a base period employer and is receiving the same employment from the employer that she received during her base period and therefore any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein and the account of the employer herein shall be relieved of any charges for unemployment insurance benefits to which the claimant is entitled.
3. Whether the claimant is overpaid unemployment insurance benefits. She is not.

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.
 - a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The real issue here is whether the employer herein, Denison Community School District, should be charged for any unemployment insurance benefits to which the claimant is entitled. The administrative law judge concludes that it should not be charged for any unemployment insurance benefits to which the claimant is entitled. The evidence establishes that, at all material times hereto, the claimant was and is still employed by the employer as a part-time on-call as needed substitute food service worker. The claimant still remains on the employer's list for substitute food service workers. The claimant has never done anything to indicate that she does not want to be considered for such work nor has the employer ever done anything to the claimant to indicate that she would not be considered for such work. The last time the claimant worked for the employer was in the fourth quarter of 2004 but this does not change the character of the claimant's employment. Since the claimant has not separated from her employment, the claimant is not disqualified to receive unemployment insurance benefits. The administrative law judge specifically notes that the claimant had sufficient earnings from her regular employer, Some Wear Special, Helen A. Seuntjens, in the fourth quarter of 2004 and the first and second quarters of 2005 to otherwise entitle the claimant to unemployment insurance benefits. In fact it is the separation from this employer on August 23, 2005, when the employer's store where the claimant was employed closed, that triggered the claimant's application for unemployment insurance benefits. The administrative law judge further notes that even if the claimant had separated from the employer herein and that separation was disqualifying, the claimant has requalified to receive such unemployment insurance benefits after that separation. However, as noted above, the claimant has had no such separation from the employer herein. The claimant is receiving the same employment from the employer now as she did during her base period. Since the claimant is in the employ of the employer herein, a base period employer, and she is receiving the same employment from the employer herein now as she received during her base period, any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein and the account of the employer herein shall be relieved of any such charges. Accordingly, unemployment

insurance benefits are allowed to the claimant, provided she is otherwise eligible, but any unemployment insurance benefits to which the claimant is entitled shall not be charged against the account of the employer herein, Denison Community School District, and the account of that employer shall be relieved of any such charges for unemployment insurance benefits to which the claimant is entitled.

The administrative law judge notes that the claimant's separation from her regular employer, Some Wear Special, Helen E. Seuntjens, occurred in the same week as the 2005-2006 school year began for the employer herein, the administrative law judge concludes that the "between terms denial" for one employed by an educational institution is not really relevant or applicable. See Iowa Code section 96.4(5)(b). Further, in any event, the claimant is otherwise monetarily eligible for unemployment insurance benefits as stated above. See 871 IAC 24.52(6).

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,292.00 since filing for such benefits effective August 21, 2005. The administrative law judge concludes that the claimant is entitled to these benefits and is not overpaid such benefits but those benefits shall not be charged to the account of the employer herein.

DECISION:

The representative's decision of October 3, 2005, reference 01, is modified. The claimant, Joleen K. Grau, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, but any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein, Denison Community School District, and the account of that employer shall be relieved of any such charges to which the claimant is entitled, because the claimant is receiving the same employment from that employer as she did during her base period. As a result of this decision the claimant is not overpaid any unemployment insurance benefits.

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