

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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JORY T BIRLINGMAIR

Claimant

and

T & C CLEANING INC

Employer

HEARING NUMBER: 18BUI-11100

EMPLOYMENT APPEAL BOARD  
DECISION

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-1, 24.1-113

**DECISION**

**FINDINGS OF FACT:**

The administrative law judge issued a decision in this matter allowing benefits to the Claimant during a period of layoff from T & C Cleaning. The decision only allowed benefits from October 9, 2018 through November 6, 2018 since the Claimant started back to work for T & C on November 7.

The Claimant filed an initial claim for benefits during the week beginning on October 7, 2018. He filed weekly claims for benefits during the weeks beginning on October 7, 2018, October 14, and October 21. He ceased filing a weekly claim for benefits during the week ending October 27, 2018 (that is the week that started on October 21). The Claimant was disqualified from benefits based on his separation from Aramark. That disqualification was affirmed by a decision of the Administrative Law Judge issued on November 21, 2018. That decision was not appealed to the Board and thus is final and binding. The Claimant's claim for benefits during the week beginning on October 7, 2018 was denied because he was paid vacation pay in excess of his benefit amount that week. The Claimant's claim for benefits during the next two weeks were not paid out because his claim was locked as a result of the separation from Aramark. As of November 1, 2018 the Claimant had not earned ten times his weekly benefit amount since his separation from Aramark.

## REASONING AND CONCLUSIONS OF LAW:

Official Notice: Iowa Code section 17A.14 provides:

Rules of evidence -- official notice.

In contested cases: ...

4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the agency determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

Under the rules of court the matters of which judicial notice may be taken are:

Rule 5.201 Judicial notice of adjudicative facts.

a. Scope of rule. This rule governs only judicial notice of adjudicative facts.

b. Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Iowa Rule of Evidence 5.201.

The Board has reviewed the claim history, protest history, and other steps in the agency process. We have done this by consulting the records of Iowa Workforce Development that we are authorized to access. We have taken official notice of the records because those records are a "sourc[e] whose accuracy cannot reasonably be questioned." I. R. Evid. 5.201. Further the meaning of these records are within the "the specialized knowledge of the agency..." We need not give notice to these parties that we intend to take this notice since "fairness to the parties does not require an opportunity to contest such facts." Iowa Code §17A.14. This is true because there really is no point to contesting the timing and effect of these records. The agency is also allowed to rely on "[t]he agency's experience, technical competence, and specialized knowledge..." when evaluating the evidence. Iowa Code §17A.14(5). Finally we note that taking notice on appeal is not unusual. I. R. Evid. 5.201(f) ("Judicial notice may be taken at any stage of the proceeding.")

T&C Not Aggrieved: The key to our decision today is that the Claimant was allowed benefits during a layoff that lasted from October 9, 2018 through November 6, 2018. During the period from October 9, 2018 through November 6, 2018 the Claimant filed for benefits during only three weeks. These were the weeks beginning on October 7, 2018, October 14, and October 21.

These three weeks are thus the only ones relevant. In general a claimant must file a weekly claim for benefits during a given week in order to be

paid for benefits that week. Weeks during which no claim was filed the Claimant could not collect benefits no matter what our ruling today.

Before looking at the only weeks in question we first of all note that when one is disqualified from benefits at a regular full-time employer then one may not collect any benefits at all, regardless of the source of the credits. Iowa Code §96.5. This disqualification lasts until the claimant earns 10 times his weekly benefits amount following the disqualifying event. What this means here is that following the Claimant's October 10 separation from Aramark he would not be able to collect benefits from Aramark *or* from T&C. He could only start collecting again once he earned 10 times his weekly benefit amount. As of November 1 he had not made such earnings. So, for each of the weeks that the Claimant filed for benefits his claim was locked because of the Aramark disqualification. He wasn't paid anything these weeks because his claim was locked. So the only weeks at issue in this case were not eligible for payment no matter what ruling we made in this case.

In short, the Claimant collected no benefits during the layoff from T&C because the Aramark decision prevented it. Since the Aramark decision is final there is no way the Claimant can collect benefits based on the claims he filed in October no matter what our ruling to today.

For this reason T&C's appeal must be and is dismissed.

*Additional Note to T&C:* The Code provides that "...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." Iowa Code §96.7(2)(a)(2)(a). Thus if the Claimant should start collecting benefits after requalifying from the Aramark separation, T & C may wish to ask Iowa Workforce to determine whether T&C is chargeable on this claim. Normally what happens when a worker loses a "regular" job and keeps a "moonlighting" job is that the worker gets a reduced benefit for partial employment because of wages he makes at the moonlighting employer, but the moonlighting employer is not *charged* for those benefits. Here the Claimant cannot start collecting benefits until he earns 10-times his weekly benefit amount, but even if he does start collecting at some point T&C should not be charged so long as it keeps him working on his usual part-time schedule.

## **DECISION:**

The appeal of T&C is **DISMISSED**. The decision of the administrative law judge remains in full force and effect. T&C will experience no adverse effects as a result of today's decision. If the Claimant requalifies for benefits by working in and earning 10 times his weekly benefit amount since the date of his separation with Aramark he will be able to collect benefits *at that time* assuming he is otherwise eligible. If after requalification the Claimant remains employed with T&C on a part-time basis then the earnings from T&C may reduce any benefits paid, and T&C should be relieved of charges under Iowa Code §96.7(2)(a)(2)(a).

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