

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL M CAMP
Claimant

APPEAL NO. 07A-UCFE-00033-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DEPT OF VETERANS AFFAIRS
CENTRAL IA HEALTHCARE SYSTEMS 05**
Employer

**OC: 11/11/07 R: 02
Claimant: Respondent (1)**

Section 96.7-2a(2) - Appeals

STATEMENT OF THE CASE:

The Department of Veterans Affairs filed an appeal from a representative's decision dated November 28, 2007, reference 02, holding the employer potentially chargeable for benefits paid based upon the claimant's separation from employment on November 11, 2006, holding that the decision in the separation was made on a prior claim and remains in effect. After due notice was issued, a hearing was held by telephone on December 17, 2007. Mr. Camp participated personally. Participating for the employer was Mr. Pete Jungen, Employer Relations Specialist. Exhibits One and A, B, and C were received into evidence.

ISSUE:

The issue in this matter is whether the employer is relieved of chargeability.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was discharged from employment on November 11, 2006 for what the employer considered to be gross misconduct in the performance of his duties. Mr. Camp opened an initial claim for unemployment insurance benefits effective November 12, 2006. The claimant was allowed benefits by fact-finder's decision dated February 16, 2007 that held the employer did not furnish sufficient evidence to show misconduct. The Department of Veterans Affairs appealed the fact-finder's determination and notices were sent to the parties. A hearing was held on March 20, 2007 at which time both the claimant and the Department of Veterans Affairs were represented. On March 23, 2007, an administrative law judge issued a decision affirming the fact-finder's decision that the claimant had been separated from employment under non disqualifying conditions. The Department of Veterans Affairs appealed the March 23, 2007 decision to the Appeal Board and on May 17, 2007, the Iowa Appeal Board affirmed the administrative law judge's decision that the claimant's separation was non disqualifying.

In its decision affirming the administrative law judge's decision the Employment Appeal Board specifically held that the admission of additional evidence was not warranted (Exhibit C). On

the first page of the Employment Appeal Board's decision the parties were given notice of their appeal rights if there was disagreement with the Appeal Board's decision. The notice states:

This decision becomes unless (1) A request for 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.

The record in this matter shows no petition or rehearing or petition to the district court by the Department of Veterans Affairs.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the statements, testimony and evidence in the record that the administrative law judge lacks jurisdiction to make any ruling that disturbs the decision of the Iowa Employment Appeal Board in this matter. The stated purpose of the employer's appeal of the November 28, 2007 fact-finder's decision is to re-litigate the claimant's initial separation from employment that took place on or about November 11, 2006. The Department of Veterans Affairs seeks to avoid charging of its expense account on the basis that the separation should be held as disqualifying under the provisions of the Iowa Employment Security Act.

The evidence in the record establishes that the Veterans Administration filed a timely appeal from the initial determination in this matter that was dated February 16, 2007 and based upon the claimant's November 12, 2006 claim for unemployment insurance benefits. The employer's appeal was received and a telephone conference hearing was scheduled for and held on March 20, 2007 by the administrative law judge of the Iowa Workforce Development Appeals Section. On March 23, 2007 a decision was issued and mailed by the administrative law judge and the Department of Veterans Affairs timely appealed that decision to the Iowa Appeal Board for review. By decision dated May 17, 2007, the Appeal Board affirmed the administrative law judge's decision that the claimant's separation was non disqualifying. Although the decision of the Employment Appeal Board clearly explained the appeal rights to the parties, the evidence in the record does not show that the employer either filed an appeal to the district court or petitioned the Appeal Board for rehearing. By operation of law, the decision of the Employment Appeal Board thus became final 30 days after it was issued.

The Iowa Supreme Court in the case of Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979) held that there is a mandatory duty to file appeals within the time allotted by statute that in the absence of a timely appeal there is no authority to change the decision of a representative.

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.

For the reasons stated herein, the administrative law judge finds that the employer's sole basis for its most recent appeal is to avoid the potential chargeability for benefits paid to Mr. Camp based upon his separation from employment that took place on or about November 11, 2006. As the decision that allowed benefits to Mr. Camp and charging to the employer's account has been affirmed by the administrative law judge as well as by the Appeal Board and the record does not reflect an appeal to the district court or that the Appeal Board has agreed to reconsider, the administrative law judge concludes that the Appeal Board's decision has become final and that the administrative law judge has no jurisdiction to overturn it or the corresponding charging.

DECISION:

The representative's decision dated November 28, 2007, reference 02, is hereby affirmed. The employer is subject to potential charging of its account based upon the claimant's separation from employment that took place on November 11, 2007.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/css