

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

MARK T FETTER  
300 B ST  
TOLEDO IA 52342

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

BRAD JOLLY  
ATTORNEY AT LAW  
SOUTHGATE OFFICE PLAZA - STE 500  
5001 AMERICAN BLVD W  
MINNEAPOLIS MN 55437

Appeal Number: 04A-UI-00932-SWT  
OC 06/01/03 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

871 IAC 24.1(113) - Layoff

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 20, 2004, reference 01, that concluded the claimant was laid off due to lack of work. A telephone hearing was held on February 17, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Brad Jolley participated in the hearing on behalf of the employer with witnesses, Ram Dhanwada, Larry Laskley, and Laurie Lasley-Santos. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the Sac & Fox Tribe as the tribe's finance and contract compliance officer from October 3, 1983 to June 3, 2003. One of his primary jobs was to monitor the federal contracts of the tribe.

On March 26, 2003, a group of tribal members occupied the tribal offices and ousted the elected tribal chairman, Alex Walker Jr. and other council members because the council had rejected a recall petition. The insurgent group was led by Homer Bear. The claimant worked for the Tribe under the leadership of Alex Walker Jr. before Homer Bear and his followers took over the tribal offices. He continued to work for the Tribe after they took over the tribe government.

The Alex Walker Jr. organization continued to be recognized by the Bureau of Indian Affairs and maintained control over the federal funds and contracts of the Tribe. Consequently, the Tribe lacked work for the claimant and the claimant was laid off for an indefinite period of time on June 3, 2003.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 1, 2003. He began filing and receiving benefits without protest from the employer. The base period of the claim was January 1, 2002 through December 31, 2002.

On June 23, 2003, the claimant accepted employment with the Alex Walker Jr. organization as its financial administrator. He worked in the position until November 22, 2003. The wages paid the claimant were reported under the Tribe's account number. As of November 22, 2003, new elections for the tribal council had been held and the Alex Walker Jr. government no longer had control over the federal funds and contracts. As a result, there were no longer any funds available to pay the claimant.

When the comptroller for the tribe learned that the claimant was working for the Alex Walker Jr. government, he sent the claimant a letter dated July 1, 2003, stating that the employer considered him to have resigned his position with the employer effective July 1, 2003. The letter explained that by accepting employment with the "elected council," the claimant had accepted "secondary employment" that was a conflict of interest with the Tribe's best interests.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of November 23, 2003. The claimant has not been paid any wages since filing for unemployment insurance benefits.

#### 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 June 3, 2003. The employer argues that the claimant quit his employment or was discharged for work-connected misconduct when he accepted employment with the Alex Walker Jr. organization. At the point the claimant took the job with the Alex Walker Jr. organization, he was indefinitely laid off and receiving no pay from the Tribe. He was unemployed at that time and was not obligated to remain unemployed. While his decision to take a job with Alex Walker Jr. organization affected his chances of being

rehired by the Tribe if and when work was available, he did not voluntarily quit on-going employment nor was he discharged from any on-going employment. No disqualification shall be imposed based on the letter of termination dated July 1, 2003.

The employer also argues that the payments made to the claimant by the Alex Walker Jr. organization were improperly made and reported under the Tribe's unemployment insurance account number. It is not necessary to resolve this issue because the claimant's benefits were based on the wages paid to the claimant from January 1, 2002 through December 31, 2002. Whether the wages were properly paid and reported or improperly paid and reported would not affect the claimant's qualification for benefits when he filed the additional claim for benefits in November 2003. The fact of the matter is that claimant was unemployed after November 22, 2003, because the Alex Walker Jr. organization could no longer pay him. He was not subject to disqualification at that point for quitting any employment or being discharged for work-connected misconduct from any employment. He is qualified to receive benefits effective November 23, 2003.

As a reimbursing employer, the Tribe does not pay unemployment taxes on the wages paid to its employees but instead reimburses the state for benefits paid to its unemployed claimants. Therefore, the fact that wages were improperly reported under the employer's account would only become an issue for unemployment insurance purposes, if the claimant were to file for unemployment insurance benefits in a new benefit year after June 1, 2004, and the wages paid by the Alex Walker Jr. organization were in the base period on which the claimant's benefits were based.

Furthermore, it seems that 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.

#### DECISION:

The unemployment insurance decision dated January 20, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf