

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN BRADY
Claimant

APPEAL NO. 09A-UI-07892-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

**Original Claim: 01/25/09
Claimant: Respondent (1)**

871 IAC 23.43(9)a – Relief of Charges on a Combined Wage Claim

STATEMENT OF THE CASE:

O'Reilly Automotive, Inc. filed a timely appeal from a representative's decision dated May 22, 2009, reference 07, which held the employer could not be relieved of charges based upon benefits paid by another state unless the employer could be relieved of charges on an Iowa claim. Although duly notified, the claimant did not participate. The employer participated by Jeffery Shelledy, store manager.

ISSUE:

The issue is whether the employer can be relieved of charges based upon benefits paid by another state.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: Brian Brady was employed as a parts specialist trainee by O'Reilly Auto Parts from October 2007 until November 15, 2007, when he was discharged because of lack of satisfactory progress during a training period as a new company employee. The claimant had been hired as a probationary employee during the training period and extensive training and one-on-one supervision had been given to the claimant during the training. In spite of the best efforts of the store manager, Mr. Brady did not demonstrate the ability to perform the job as a company parts specialist at the level of competence expected by the employer. Although the store manager and his assistant repeatedly showed Mr. Brady the proper procedures and suggested the more satisfactory method of performing duties, such as customer service, Mr. Brady continued to perform at a level below the company's expectations. When it was determined that the claimant did not have the skills necessary to learn the job to the level of competence expected by the employer, a decision was made to separate Mr. Brady from his employment.

Mr. Brady is a resident of the state of Missouri and filed a claim for unemployment insurance benefits in that state. The employer was sent a notice that an interstate claim had been filed and responded that the claimant was terminated during a probationary period for unsatisfactory progress during training.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer cannot be relieved of charging in this matter.

871 IAC 23.43(9) provides in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against a contributory employer's account for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim....

The evidence in this case clearly establishes that the claimant was discharged under non-disqualifying conditions under Iowa law. Mr. Brady was discharged when he did not demonstrate the necessary abilities to perform the duties of a parts specialist during the 90-day probationary period that he was given as a new employee. Although the store manager and his assistant tried to the best of their abilities to train Mr. Brady, he did not have sufficient skills or capacity to learn and to perform at the level of competency expected by the employer and therefore was discharged during a probationary period.

871 IAC 24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

For the above-stated reasons, the administrative law judge concludes that the information provided on the employer's protest did not provide disqualifying information, as it indicated that the claimant was discharged due to lack of ability during a probationary or trial period of employment. As such, the fact-finder was correct in determining that the employer could not be relieved of charges based upon benefits paid by another state, as the employer could not be relieved of charging on an Iowa claim in this matter.

DECISION:

The representative's decision dated May 22, 2009, reference 07, is affirmed. The employer cannot be relieved of charges based upon benefits paid by another state on the claim of Brian Brady, as the employer would not be relieved of charges on an Iowa claim.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw