

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

KATHY L MAXWELL

Claimant,

and

TYSON FRESH MEATS INC

Employer.

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HEARING NUMBER: 08B-UI-04606

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

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT: Kathy Maxwell (Claimant) was hired by Tyson Fresh Meats (Employer) on December 12, 2006, as a full-time first legger. (Tran at p. 4; p. 7). The Claimant quit working for the Employer on January 8, 2008. (Tran at p. 3; p. 8). The Claimant quit working for the Employer to work for Sedona Staffing. (Tran at p. 4). At the time of her quit the Claimant had already accepted the job with Sedona Staffing. (Tran at p. 4; p. 5; p. 6).

Official notice is taken of the following facts that are readily capable of certain verification through reference to the computer records which the Board is authorized to access. Fairness to the parties does not require that they be given the opportunity to contest these facts:

The Claimant worked for L.A. Leasing, Inc. from January 13, 2008 through the 21st earning wage credits of \$378. [Records of Iowa Workforce Development]

“ Sedona Staffing” is a registered fictitious name for “L.A. Leasing, Inc.” [Records of Iowa Secretary of State].

REASONING AND CONCLUSIONS OF LAW:

This case involves a voluntary quit. Iowa Code Section 96.5(1) states:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Even where a claimant quits but without good cause attributable to the employer the claimant may nevertheless collect benefits under certain circumstances. One of this is where the quit is for the purpose of accepting other employment. On this issue the Code provides:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code §96.5(1)(a). The rules of Workforce further explain:

The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self employment.

871 IAC 24.28(5).

We note, as an initial matter, a discrepancy between these two provisions. The statute requires that “the individual performed services in the new employment.” Iowa Code §96.5(1)(a). The rule states that benefits are allowed if the claimant accepts the second employment but is separated “before or after having started the new employment.” Naturally, the Code governs the rules and we conclude that in order for the other employment provision to apply the Claimant must prove that she actually did render services in the new employment.

The Claimant testified that she actually did render services to the subsequent employer. (Tran at p. 4; p. 6). The Board has verified that the Claimant's contentions are accurate. We have done this by consulting the computer records of Iowa Workforce Development and the Iowa Secretary of State that we are authorized to access. Taking notice on appeal is not unusual. I. R. Evid. 5.201(f)(“Judicial notice may be taken at any stage of the proceeding.”). We have taken official notice of the computer records because those records are a “sourc[e] whose accuracy cannot reasonably be questioned.” I. R. Evid. 5.201. 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 contents of these records, but also because the Employer's account will not be charged as a result of our decision today.

In accord with these records, and the Claimant's testimony, we have found that the Claimant did render services to Sedona/LA Leasing. Under the Code since the Claimant left for the sole purpose of accepting "other or better employment" and since she did perform services in the other employment then the Claimant is not disqualified based on her separation from the first employer. The separation from Tyson Fresh Meats falls under the provisions of Iowa Code §96.5(1)(a) and the Claimant is therefore allowed benefits.

Our ruling does not alter the finding of the Administrative Law Judge's that the Claimant was able and available for work.

Finally, since Tyson Fresh Meats was the employer whom the Claimant quit in order to take another job under the law Tyson's account may not be charged with benefits paid to the Claimant. Iowa Code §96.5(1)(a); 871 IAC 23.43(5)(no charge to prior employer when quit for better job).

DECISION:

The administrative law judge's decision dated May 30, 2008 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

Monique Kuester

RRA/fnv