

**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**

**ALAN R TORKZADEH
20 PATERSON CIR
WAUKEE IA 50263**

**THE MEMBERS GROUP INC
D/B/A THE MEMBERS GROUP
3737 WESTOWN PKWY
WEST DES MOINES IA 50266**

**Appeal Number: 04A-UI-08794-RT
OC: 08/01/04 R: 02
Claimant: Respondent (5)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, The Members Group, Inc., doing business as The Members Group, filed a timely appeal from an unemployment insurance decision dated August 11, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Alan R. Torkzadeh. After due notice was issued, a telephone hearing was held on September 9, 2004, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge attempted to call that number four times, either the phone rang without any answer or was busy. Carrie Kompelien, Human Resources Specialist, participated in the hearing for the employer. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant began his employment with Premier Systems Incorporated (PSI) when it was a sister company of the employer here, The Members Group, Inc., doing business as The Members Group. That employment began on October 7, 2002. On June 14, 2003, the employer here, The Members Group, Inc., doing business as The Members Group, sold Premier Systems Incorporated to another employer, Harland Financial Solutions. The claimant continued to work for PSI, but as owned by Harland Financial Solutions. There was no lapse in his employment. On or about August 2, 2004, the claimant was laid off from his employment with Harland Financial Solutions (PSI) as shown at Department Exhibit One, because of the companies need to reduce business related expenses and not related to any performance issues or misconduct on the part of the claimant. The claimant then filed for unemployment insurance benefits effective August 1, 2004 and received unemployment insurance benefits in the amount of \$44.00 for benefit week ending August 7, 2004 (vacation pay of \$307.00). Iowa Workforce Development records show earnings from Premier Systems Incorporated out of Decatur, Georgia for the second quarter, third quarter, and fourth quarter of 2003 and the first quarter of 2004. Previously, earnings are shown to be paid to the claimant from the employer here, The Members Group, Inc., doing business as The Members Group. Premier Systems Incorporated now has a different employer number from that of the employer herein. When the sale of PSI occurred on June 14, 2003, it was the intention of Harland Financial Solutions to operate it as a new business and did so. There is not a continuing relationship between PSI and Harland Financial Solutions with the employer herein, The Members Group, Inc., doing business as The Members Group.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment with the employer herein was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

Iowa Code Section 96.5-1-a provides:

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. But the individual shall not be disqualified if the department finds that:
 - 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.

The administrative law judge concludes that the claimant separated from his employment with the employer herein The Members Group, Inc., doing business as The Members Group, on

June 14, 2003 when the employer sold its sister company Premier Systems Incorporated (PSI) for whom the claimant worked, to Harland Financial Solutions. The claimant remained employed with Premier Systems Incorporated as owned by Harland Financial Solutions from June 14, 2003 until he was laid off for a lack of work by Harland Financial Solutions or PSI on August 2, 2004. There was no lapse in his employment. Harland Financial Solutions purchased PSI intending to operate it as a new business and did so even using a new employer's identification number for unemployment insurance purposes. The claimant received earnings from PSI as owned by Harland Financial Solutions for four quarters as shown by Iowa Workforce Development records and no doubt additional quarters that are not yet entered in Iowa Workforce Development records. Under these circumstances, the claimant is considered to have voluntarily left his employment with the selling employer, The Members Group, Inc., doing business as The Members Group, in good faith for the sole purpose of accepting other or better employment which he did accept and for whom he performed services, with the purchasing employer, Harland Financial Solutions or PSI as owned by Harland Financial Solutions. Therefore, the claimant is not disqualified to receive unemployment insurance benefits but benefits relating to wage credits earned with the employer herein, the selling employer, The Members Group, Inc., doing business as The Members Group, shall be charged to the unemployment compensation fund and not to the account of that employer. Unemployment insurance benefits are allowed to the claimant provided he is otherwise eligible, but any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein, The Members Group, Inc., doing business as The Members Group, but shall be charged to the unemployment compensation fund.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$44.00 since separating from the employer herein on June 14, 2003 and filing for such benefits effective August 1, 2004. The administrative law judge concludes that the claimant is not overpaid these unemployment insurance benefits as a result of his separation from the employer herein on or about June 14, 2003. The administrative law judge reaches no conclusion as to whether the claimant may or may not be overpaid these benefits as a result of a separation from the purchasing employer, Harland Financial Solutions or Premier Systems Incorporated as it was purchased by Harland Financial Solutions.

DECISION:

The representative's decision dated August 11, 2004, reference 01, is modified. The claimant, Alan R. Torkzadeh, is not disqualified to receive unemployment insurance benefits arising out of his separation from the employer herein, The Members Group, Inc., doing business as The Members Group, because he voluntarily left that employment in order to take other employment which he did accept and for whom he performed services when the employer sold its business, Premier Systems Incorporated to a new employer Harland Financial Solutions on June 14, 2003. However, any unemployment insurance benefits relating to wage credits earned with the employer herein, The Members Group, Inc., doing business as The Members Group, shall not be charged to the account of that employer but shall be charged to the unemployment compensation fund. The administrative law judge reaches no conclusion as to whether the claimant is entitled to receive unemployment insurance benefits as a result of a separation from any subsequent employer including Harland Financial Solutions and/or Premier Systems Incorporated. As a result of this decision, the claimant has not been overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

kjf/tjc