

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEBORAH L BERRY**  
Claimant

**KBBG RADIO**  
Employer

**APPEAL 21A-UI-04314-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/20**  
**Claimant: Respondent (1)**

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Iowa Admin. Code r. 871-24.19(1) – Determination and Review of Benefit Rights  
Iowa Admin. Code r. 871-24.28(6-8) – Prior Adjudication  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The employer/appellant, KBBG Radio, filed an appeal from the January 20, 2021 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 7, 2021. The claimant, Deborah L. Berry, participated personally and was represented by Tom Frerichs, attorney at law. Robert Wright participated on behalf of the claimant. The employer participated through Dr. Gloria Kirkland Holmes. Shirley Greer also testified.

The parties waived proper notice of whether the August 2019 separation has been previously adjudicated in a prior benefit year. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**NOTE TO EMPLOYER:**

If you wish to change the contacts or address of record, please access your account at:  
<https://www.myiowaui.org/UITIPTaxWeb/>.

**ISSUE:**

Was the separation adjudicated in a prior representative’s decision?

**FINDINGS OF FACT:**

Claimant began employment in June 2017. Claimant last performed work as a paid employee in the capacity as president until August 21, 2019. Employer laid claimant off due to a lack of funding. Claimant then volunteered her time, unpaid, until December 2020.

Claimant then accepted a position to work on the presidential campaign for Pete Buttigieg. Claimant worked in the capacity as an independent contractor/1099 employee. Claimant worked on his campaign from January until he discontinued campaigning in February 2020. Claimant has not performed other employment since separation.

Claimant originally established a claim for unemployment insurance benefits with an effective date of August 18, 2019. The notice of claim was mailed to the employer's address of record. The employer responded to the notice of claim through Candice Lanning, and stated claimant had been laid off due to a lack of work and the employer was not protesting benefits. (See Administrative Record). The claimant was allowed benefits in a decision dated August 30, 2019. Employer did not appeal the initial decision. That decision is final at this time.

Employer also did not appeal subsequent statement of charges mailed November 8, 2019, February 7, 2020 and August 7, 2020, which reflected employer was charged for benefits attributed to claimant.

Claimant later established a claim for unemployment insurance benefits with an effective date of August 16, 2020. Claimant did not return or resume paid employment with KBBG Radio as an employee after the August 2019 separation. IWD issued a second decision, dated January 20, 2021 (reference 02), referencing a separation date of January 28, 2020. However, claimant was not a paid employee after August 2019. There was no period of reemployment and second separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the separation at issue has been previously adjudicated.

Iowa Code section 96.6 creates the jurisdictional structure and parameters by which unemployment insurance issues are to be decided. The Benefits Bureau serves as the first-level decision maker. The Appeals Bureau serves as the second-level adjudicator. The Employment Appeal Board serves as the third-level adjudicator. Unless appealed in a timely manner and reversed on appeal, a finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of Iowa Workforce Development, administrative law judge, or the Employment Appeal Board, is binding upon the parties in proceedings brought under this chapter. See Iowa Code section 96.6(3) and (4). It causes jurisdictional problems when the Benefits Bureau enters a decision that duplicates an administrative law judge's prior decision.

Iowa Admin. Code r. 871-24.19(1) provides:

Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. . . . The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any other such party entitled to notice, within ten days after such

notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

The issue presented was resolved in a prior claim year (original claim date August 18, 2019) as the representative's decision dated August 30, 2019, (reference 01). The administrative law judge recognizes the employer does not agree but is not allowed to have the matter re-decided simply because the claimant filed a new claim in a different benefit year. The current decision, referring to the prior claim year decision for the same separation date, is affirmed. Because the employer was not previously relieved of charges with the prior adjudication, its account cannot now be relieved of charges.

**DECISION:**

The January 20, 2021 (reference 02) initial decision is affirmed. The claimant's 2019 separation at issue has been adjudicated in a prior claim year and that decision has become final, without change in effect. The employer's account is not relieved of charges.



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Jennifer L. Beckman  
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April 19, 2021  
Decision Dated and Mailed

jlb/scn