

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELAINE R JOHNSON
Claimant

APPEAL NO. 08A-UI-04252-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRIMO DEVELOPMENT LTD
Employer

OC: 04/06/08 R: 01
Claimant: Respondent (5-R)

Section 96.7-2-b – Separation due to Sale of Business

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 30, 2008, reference 01, that concluded the claimant's discharge on March 22, 2008, was not for work-connected misconduct. A telephone hearing was held on May 14, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Carol Van Arnam participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant's separation from employment under disqualifying conditions?

FINDINGS OF FACT:

The claimant worked for the employer, Primo Development Ltd., in its Godfather's Pizza restaurant in Cherokee, Iowa, from April 12, 2007, to October 30, 2007.

Effective November 1, 2007, the employer sold its restaurant to Tim and Deb Bonnstetter, under the business name IFOS. The claimant continued to work at Godfather's Pizza for the Bonnsetters until March 22, 2008, when she was discharged. Primo Development Ltd. also sold its restaurant in Denison, Iowa, to Tim and Deb Bonnstetter. Primo Development Ltd. continues to own other Godfather's Pizza restaurants in Iowa.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 6, 2008. Only the employer, Primo Development Ltd., was sent a notice of claim. It protested on the basis that the claimant worked in a part of the business that was sold on October 31, 2007. Despite this information, which should have alerted the Agency about a transfer of ownership, a fact-finding interview was held with the employer, Primo Development Ltd., listed as the claimant's last employer. Somehow the interviewer received the name and phone number for Tim Bonnstetter, and he participated in the interview and presented information on why the claimant's employment ended on March 22, 2008. When the decision was issued, it was mailed to the employer, Primo Development Ltd., not the claimant's actual last employer, IFOS, or to the Bonnsetters.

The Agency records do not show any wages for the claimant reported by IFOS or the Bonnsetters for the fourth quarter of 2007 or the first quarter of 2008. I cannot find any unemployment insurance record showing a sale of this business or the establishment of an employer account for IFOS or Tim Bonnsetter.

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.

Since the claimant did not voluntarily quit employment with Primo Development Ltd. and was not discharged for misconduct on October 1, 2007, she is eligible for benefits.

The next question is whether Primo Development Ltd. is subject to charge for benefits paid to the claimant. The unemployment insurance law in Iowa Code § 96.7-2-b provides for the transfer or partial transfer of an employer's account in the case of the sale of business. This question, however, cannot be determined, since the evidence is unclear as to what happened with the unemployment account when the business in Cherokee was sold to IFOS. This issue is remanded to the Agency to investigate and make a determination.

The decision dated April 30, 2008, regarding the separation from work on March 22, 2007, was not mailed to the claimant's last employer. The Agency is required to issue the decision to Tim and Deb Bonnsetter, IFOS, 303 Jefferson St., Remsen, Iowa, 51050, to allow them to file an appeal of the decision.

DECISION:

The unemployment insurance decision dated April 30, 2008, reference 01, is modified with no effect on the outcome of the case. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The issue about whether the employer will be charged for benefits is remanded to the Agency to investigate and make a determination. The Agency is required to issue the decision dated April 30, 2008, reference 01, to Tim and Deb Bonnsetter, IFOS, 303 Jefferson St., Remsen, Iowa, 51050, to allow them to file an appeal of the decision.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw