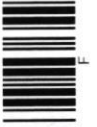




STATE OF NEW MEXICO
NEW MEXICO DEPARTMENT OF
WORKFORCE SOLUTIONS
PO BOX 1928
Albuquerque, NM 87103
www.dws.state.nm.us



RECEIVED
JUL 29 2019
BY: _____

Colfax county
P.O. box 1498
Raton, nm 87740

EAN: 96532
FEIN: 856000208
July 25, 2019

DECISION OF APPEALS TRIBUNAL

Claimant :

Martinez, Barbara
653 E 9TH ST
CIMARRON, NM 87714
Claimant ID #: 2000105456

Employer [APPELLANT] :

COLFAX COUNTY
P.O. Box 1498
Raton, NM 87740
EAN #: 00096532-1

Issue ID: 5502478

Appeal Decision: Affirm

Date Decision Becomes Final if Not Appealed: August 9, 2019

Decision Mailing Date: July 25, 2019

Date(s) of Scheduled Hearing(s): July 19, 2019

Date Appeal Filed To Appeals Tribunal: June 27, 2019

Original Determination: Eligible

Date of Original Determination: June 24, 2019



29074667

An Equal Opportunity Employer

Page 1 of 1

IMPORTANTE: Este documento afecta su elegibilidad para recibir beneficios de Seguro de Desempleo. Si usted no entiende este documento, llame inmediatamente al centro de servicio al cliente del Departamento de Soluciones de Fuerza Laboral de Nuevo México al 1-877-664-6984, de lunes a viernes, desde las 8:00 de la mañana hasta las 4:30 de la tarde.

In re: Barbara Martinez, Claimant v. Colfax County, Employer

Issue ID: 0005 5024 78-02; Claimant ID: 2000105456

ISSUE AND LAW:

The employer appealed a determination issued by the Claims Adjudicator, which held that the claimant was discharged not for misconduct connected with the employment. Consequently, the employer's experience account was held subject to potential pro rata benefit charges. Applicable to this case is Unemployment Compensation Law Section 51-1-11(A).

APPEARANCES:

(via teleconference)

Employer: Brenda Samora; Human Resources, Employer Witness

Based upon the records and testimony, the Administrative Law Judge (ALJ) enters the following:

FINDINGS OF FACT

1. The claimant was hired for a temporary one-day assignment as an Election Poll Worker.
2. The claimant worked only on November 1, 2018 and was paid a \$170.00 flat rate and paid per mileage, totaling \$232.80 for the day.
3. The claimant understood at the time of hire that she would only work one day.
4. The claimant completed her assignment and no other work was available.

EXHIBITS:

Employer: *No exhibits.*


CONCLUSION:

Section 51-1-11(A) of the Unemployment Compensation Law of New Mexico provides that benefits paid to a claimant shall be charged against the accounts of his base period employers on a pro rata basis, except in the case of benefits paid to an individual who: (1) left the employ of a base period employer voluntarily without good cause in connection with his employment; or (2) was discharged from the employment for misconduct connected with the work.

In the instant case, the employer is the moving party to the separation. Although, the claimant knew she was hired to work only one day, the employer had no other work available for the claimant. The Unemployment Law states that the employer must show the employee was discharged for misconduct to prevent them from receiving benefits and for the employer's account not to be charge. The employer has not established misconduct connected with the employment. Therefore, the employer has not provided sufficient information to relieve their experience rate account of charges.

DECISION

THE DETERMINATION APPEALED IS AFFIRMED. LA DETERMINACIÓN APELADA SE AFIRMA. The employer's experience account is liable for potential pro rata benefit charges as a result of this separation per Section 51-1-11(A).



LaNita Pickett; Administrative Law Judge

Appeal Rights: If you do not agree with this decision and wish to appeal you MUST appeal by the DATE THE DECISION BECOMES FINAL APPEARING ON THE COVER SHEET OF THIS DECISION.

You may file an appeal using one of the following methods:

- (1) mailing a written letter of appeal to **Higher Authority, PO Box 1928, Albuquerque, NM 87103**; or
- (2) faxing a written letter of appeal to **(505) 841-8636**; or
- (3) emailing your written letter of appeal to **higherauthority@state.nm.us**.

Pursuant to 11.3.500.12 NMAC, "The information submitted with the appeal shall include a clear statement of the relevant facts and a clear statement of the party's basis for appeal."

Derechos de Apelación: Si usted no está de acuerdo con esta decisión y desea entablar una apelación, usted TIENE que hacerlo, a muy tardar, en o antes del DÍA QUE ESTA DECISIÓN TOMA VIGOR Y VIGENCIA. LA FECHA DE VENCIMIENTO PARA APELAR, SE ESPECIFICA EN LA PRIMERA HOJA DE ESTA DECISIÓN.

Usted puede entablar una apelación usando una de las siguientes opciones:

- (1) Enviar una carta de apelación manuscrita por correo enviándola a **Higher Authority, PO Box 1928, Albuquerque, NM 87103**; o
- (2) Enviar una carta de apelación manuscrita por fax al **(505) 841-8636**; o
- (3) Enviar una carta de apelación manuscrita por correo electrónico a **higherauthority@state.nm.us**.

Según dictamina el artículo 11.3.500.12 NMAC, "La información que consta en la apelación debe incluir una razón específica respecto a los hechos relevantes que forman la base por la cual la parte entabla su apelación."

Appendix A

Issue Type:	Issue Start Date:	Issue End Date:	Decision:
Discharged	11/1/2018 12:00:00 AM		Affirm

This decision results in an overpayment of unemployment benefits in the total amount of \$0 . At least 50 % of the weekly amount of any future benefits to which you are entitled may be taken and applied to your overpayment balance. To view your overpayment details, login to your account at www.dws.state.nm.us and select "Manage Debt".

Pursuant to NMSA 1978, section 51-1-38(B), if your overpayment is due to fraud, you also owe a civil penalty of 25% of the amount of benefits obtained as a result of intentional misrepresentations or failure to disclose material facts. Unlike your overpayment balance, this penalty cannot be reduced through the offsetting of future Unemployment Insurance benefits. You are required to repay the penalty in full.

You are overpaid for the week(s) below in the amount(s) indicated.

Week Ending Date:	Payment Amount:	Penalty Amount:
Total Amount	\$0.00	
Total Penalty Amount:	\$0.00	