

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA R LINEHAN
Claimant

APPEAL NO. 090-UI-00368-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INNER SOURCES INC
Employer

**OC: 06/29/08 R: 03
Claimant: Respondent (2)**

Section 96.3(5) – Duration of Benefits

STATEMENT OF THE CASE:

Inner Sources (employer) appealed a representative's November 5, 2008 decision (reference 01) that concluded Debra Linehan (claimant) was eligible to receive unemployment insurance benefits. A hearing was held on January 26, 2009, following due notice pursuant to Remand Order of the Employment Appeal Board dated January 6, 2009. The claimant participated personally. The employer participated by Terri Wendler, Owner.

ISSUE:

The issue is whether the claimant is unemployed due to her employer going out of business.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in July 2005, as a full-time office manager, performing a variety of duties at 329 Tenth Avenue Southeast in Cedar Rapids, Iowa. The employer makes spiritual cards and jewelry for sale in gift shops and other retail outlets. The claimant's employment ended in June 2008, when the building in which she worked was flooded.

As a result of the flooding, the employer decided to work from her home. The claimant was not offered the opportunity to work from the owner's home. The building in which the business was housed remains under reconstruction.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not laid off due to a business closure.

Iowa Code Section 96.3-5 provides:

5. Duration of benefits. The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to

the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off indicator" is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

871 IAC 24.29(1) provides:

Business closing.

(1) Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

871 IAC 24.29(2) provides:

(2) Going out of business means any factory, establishment, or other premises of an employer which closes its door and ceases to function as a business; however, an employer is not considered to have gone out of business at the factory, establishment, or other premises in any case in which the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business.

Since there is still an ongoing business, the business is not considered to have closed. Therefore, while claimant remains qualified for benefits based upon a layoff from this employer, she is not entitled to a recalculation of benefits.

DECISION:

The representative's November 5, 2008 decision (reference 01) is reversed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw