

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

LUCILLE L SAMPSON  
5123 HAMILTON  
SIOUX CITY IA 51108

GERI CARE HOME HEALTH INC  
2452 TRANSIT AVE  
SIOUX CITY IA 51106-1447

Appeal Number: 04A-UI-03383-BT  
OC: 01/18/04 R: 01  
Claimant: Appellant (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.3-5 – Business Closing

STATEMENT OF THE CASE:

Lucille Sampson (claimant) appealed an unemployment insurance decision dated March 15, 2004, reference 02, which held that her maximum benefit amount was being recalculated due to a business that has not permanently closed its doors. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2004. The claimant participated in the hearing. The employer did not provide a telephone number at which a representative could be contacted, and therefore, did not participate.

## FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 16, 1996 as a full-time licensed practical nurse. The employer is a corporation that operated a home health service and a medical supply and uniform company. The claimant was laid off on January 21, 2004 when the employer closed its home health service. The employer continues to sell medical supplies and uniforms at the same location and has not permanently closed its doors.

## REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether the claimant became unemployed as a result of her employer going out of business.

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), (2) provide:

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, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. 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.

The determination as to whether an individual is unemployed as a result of a business closing is made in relation to the location where the individual was last employed. In other words, the inquiry is whether the employer has gone out of business at the factory, establishment or other premises where the individual was last employed.

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.

The evidence establishes that the employer continues to operate a business at the location at which the claimant had been working. Therefore, the claimant did not become separated from her employer as a result of her employer going out of business as that term is defined by the Iowa Employment Security law. The claimant's unemployment insurance claim should be calculated based on a business that has not closed its doors.

#### DECISION:

The unemployment insurance decision dated March 15, 2004, reference 02, is affirmed. The claimant is not unemployed as a result of her employer going out of business at the location where she was last employed. Her claim should be calculated based on a business that has not permanently closed its doors.

sdb/kjf