

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT W FOSTER
Claimant

APPEAL NO. 08A-UI-05999-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“ASR INTERNATIONAL CORP
“ASR MANAGEMENT&TECHNICAL
SERVICES**
Employer

**OC: 03/30/08 R: 02
Claimant: Appellant (2)**

Section 96.3(5) – Layoff Due to Business Closing

STATEMENT OF THE CASE:

Scott Foster filed an appeal from a representative’s decision dated June 18, 2008, reference 01, which denied his request to have his claim redetermined as a business closing effective March 30, 2008. After due notice was issued a telephone conference hearing was scheduled for and held on July 15, 2008. The claimant participated personally. Participating as a witness was Dan Simpson. The employer participated by Mike Quaglino. Claimant’s Exhibit One was received into evidence.

ISSUE:

The issue is whether the claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this employer on March 28, 2008 as a quality program auditor assigned to work at a computer systems corporation facility leased from the U.S. Postal Service in Urbandale, Iowa. By letter dated February 8, 2008, the claimant was informed that the facility would close due to loss of a contract with the U.S. Postal Service effective February 25, 2008 (See Claimant’s Exhibit One). Subsequently, the contract with the Postal Service was extended one month until the claimant’s layoff date, March 28, 2008. At that time the company’s facility in Urbandale, Iowa shut down and files, documents, and equipment were removed. At the time of hearing, ASI had no facilities in operation in the State of Iowa.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was 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.

The evidence in the record establishes that the claimant was laid off due to a business closure. The evidence in the record establishes that the facility was closed effective March 28, 2008 and that equipment and materials were removed from the facility where Mr. Foster was employed

and ASR International Corporation conducted its business in Urbandale, Iowa. Therefore, the claimant is entitled to a recalculation of benefits effective March 30, 2008.

DECISION:

The June 18, 2008, reference 01, decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs