

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY L DARLING-HARDING
Claimant

APPEAL NO. 16A-UI-11099-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JOHNSTON COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 05/29/16
Claimant: Appellant (1)

Iowa Code § 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation of Wage Credits)

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 7, 2016, reference 03, which held claimant ineligible for business closing benefits pursuant to Iowa Code § 96.3-5 insurance benefits. After due notice, a hearing was scheduled for and held on October 27, 2016. Claimant participated personally. Employer participated by Melissa Jacobsen.

ISSUE:

The issue presented in this appeal is whether the claimant was laid off due to the employer going out of business and, therefore, is entitled to have the wage credits re-computed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off by employer on June 30, 2016 because claimant was laid off at the end of each of the last 22 years when claimant had worked as a bus driver. Employer made the decision that it would no longer employ bus drivers, and chose instead to outsource bus driving to a third party company, Student Transportation of America. Said third party business did not offer insurance for drivers nor did it offer a pension plan. Employer continues to operate as a business with hundreds of other employees.

Bus drivers for Johnston were invited to apply for the new jobs, but were not guaranteed employment with the new employer. Claimant chose not to apply for a job with the new company.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.3(5)a provides:

- a. 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.

Iowa Admin. Code r. 871-24.29(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.

Iowa Admin. Code r. 871-24.29(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, 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 administrative law judge holds that the claimant was not laid off as a result of the employer going out of business and, therefore, is not entitled to a re-computation of wage credits. Whereas employer no longer employs bus drivers, and claimant is and continues to be eligible

for benefits, said benefits are not extended to business closing benefits as employer is still in business.

DECISION:

The decision of the representative dated October 7, 2016, reference 03 is affirmed. The claimant is not entitled to have the unemployment insurance claim re-determined as a business closing, including a re-computation of wage credits. The claimant's request for such re-determination and re-computation is denied.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs