

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS J CHARIPAR**  
Claimant

**APPEAL NO: 10A-UI-06605-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BENTON/LINN WIRELESS LLC**  
Employer

**OC: 01/03/10**  
**Claimant: Appellant (1)**

Section 96.3-5 – Business Closing

**STATEMENT OF THE CASE:**

The claimant appealed a representative's April 22, 2010 decision (reference 01) that denied his request for business closing benefits. A telephone hearing was held on June 21, 2010. The claimant participated in the hearing. The employer responded to the hearing, but was not available for the hearing. A message was left for the employer's witness to contact the Appeals Section.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer did not receive the phone call, which may have been because the witness was in metal building. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is there good cause to reopen the hearing?

Should the claimant's request for business closing benefits be granted?

**FINDINGS OF FACT:**

The last day the claimant worked for the employer was December 30, 2009. The business was sold to I Wireless. I Wireless did not offer the claimant continuing employment. The claimant established a claim for regular unemployment benefits during the week of January 3, 2010.

In April 2010, the claimant made a request for business closing benefits. As of June 21, 2010, the claimant did not know if I Wireless still operates out of the same office building that the claimant had worked from. The claimant understands I Wireless will keep the business operating out of his former office until the last payment has been made for the business.

The employer's witness called the Appeals Section after the hearing had been closed and the claimant had been excused. Even though a message had been left on the employer's voice

mail, the witness indicated he had not been called. The witness indicated he may have had reception problems with his cell phone because he had been in a metal building.

**REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The employer's witness responded to the hearing notice and provided a phone number in which to contact him. The witness was called and a message (that was recorded) was left for the witness. Unfortunately, the witness provided a number that could not be reached when the hearing was scheduled. Additionally, the witness indicated the same information as the claimant. Based on the above facts, good cause to reopen the hearing has not been established.

When a claimant has been laid off because his employer, at which he was last employed, goes out of business, a claimant's unemployment insurance claim can be credited with one-half instead of one-third of the claimant's wages in the base period. Iowa Code section 96.3(5). Business closing or 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. 871 IAC 24.29 (2).

The evidence establishes the employer sold the business to I Wireless. The facts do not establish I Wireless has ceased operations at the claimant's former office or business location. The evidence suggests I Wireless may have a skeletal office at the claimant's former office until the last payment has been finalized. When the claimant has concrete information that I Wireless has ceased to function as a business at the claimant's previous office, the claimant could then ask his local Workforce representative for the Department to investigate and determine whether or not I Wireless has closed the business at the claimant's previous work location. As of June 22, 2010, the facts do not establish I Wireless has closed the business. Therefore the claimant's request for business closing benefits must, at this time, be denied.

**DECISION:**

Good cause to reopen the hearing was not established. The representative's April 22, 2010 decision (reference 01) is affirmed. As of the date of this decision, the claimant did not establish

that I Wireless has closed the business. Therefore, his request for business closing benefits is denied. The claimant remains eligible to receive regular unemployment insurance benefits.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs