

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TISHA S SMITH
Claimant

APPEAL NO. 13A-UI-02159-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTER VILLAGE INC
Employer

OC: 12/30/12
Claimant: Appellant (1)

Section 96.3-5 – Business Closing
871 IAC 24.29(1) – Business Closing
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 31, 2013, reference 03, that concluded the claimant was ineligible for business-closing benefits. A telephone hearing was held on March 21, 2013. The parties were properly notified about the hearing. The appeals were consolidated for the purpose of conducting the hearing with notices to the parties. The claimant participated in the hearing with her representative, Melissa Morss, and witnesses, John Erramouspe, Tiffany Wagler, Stormy Leazer, Carla Strawhacker, and Donald Ward. No one participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence.

ISSUES:

Was the appeal in this case filed timely?

Is the claimant eligible for business-closing benefits in addition to regular unemployment insurance benefits?

FINDINGS OF FACT:

Center Village Residential Care Facility is a residential facility for persons with mental disabilities located in Keosauqua Iowa. Center Village RCF was operated by the employer, Center Village, Inc., a non-profit corporation governed by a corporate board of directors until December 31, 2012. The facility premises were owned by and leased from Van Buren County. The claimant worked as an activities coordinator for the employer from October 2011 to December 31, 2012.

As of December 31, 2012, the operation of Center Village RCF was transferred to Tenco Industries Inc. Tenco Industries Inc. required the 26 employees of Center Village, Inc. to reapply for their jobs. While the executive director represented to employees that nearly all of the former employees would be rehired, only nine employees were hired. The claimant was not rehired.

Effective January 1, 2013, Tenco Industries began operating Center Village RCF at the same location and continues to do so.

Center Village, Inc. dissolved effective December 31, 2012. The unemployment account for Center Village, Inc. has been transferred to Tenco Industries Inc. Tenco Industries Inc. operates the facility as a successor employer.

An unemployment insurance decision was mailed to the claimant's last-known address of record on January 31, 2013. The decision concluded the claimant was not eligible for business-closing benefits and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by February 10, 2013.

The claimant mailed an appeal of the decision on February 7, 2013, but the postmaster did not put enough postage on it and it was returned undeliverable. The postmaster resubmitted it on February 20, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2. The claimant filed the appeal on a timely basis but due to an error by the United States Postal Service, it was not mailed properly. The appeal is deemed timely under 871 IAC 24.35(2), which states that an untimely appeal is excused if it is due to a delay or other action by the United States Postal Service.

The next issue in this case is whether the claimant was laid off due to a business closing.

Iowa unemployment insurance law provides additional benefits for claimants laid off due to their employer going out of business at the factory, establishment, or other premises at which they were last employed. Iowa Code § 96.3-5. Finally, the rules define going out of business as any factory, establishment, or other premises of an employer that closes its doors and ceases to function as a business. An employer is not considered to have gone out of business at the factory, establishment, or other premises if 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 claimant is not entitled to have the claim redetermined as a layoff due to a business closing because the business was transferred to a successor employer who continues to operate the business. The claimant remains eligible for regular unemployment benefits.

DECISION:

The unemployment insurance decision dated January 31, 2013, reference 03, is affirmed. The claimant is not entitled to have her claim redetermined as a layoff due to a business closing.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs