

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE A REED
Claimant

APPEAL NO. 08A-UI-11227-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LONGBRANCH INC
Employer

OC: 06/08/08 R: 03
Claimant: Respondent (5/R)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Longbranch, Inc. (employer) appealed a representative's November 26, 2008 decision (reference 02) that concluded Danielle A. Reed (claimant) was qualified to receive unemployment insurance benefits recalculated as due to a business closure. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2008. The claimant participated in the hearing. Kevin Van Der Waal appeared on the employer's behalf. 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.

ISSUE:

Is the claimant eligible for benefits calculated on the basis of a business closing?

FINDINGS OF FACT:

The claimant started working for the employer on November 23, 2007. She worked part time (15 – 20 hours per week) as a housekeeper at the employer's hotel operation at 100 F Avenue N.W., Cedar Rapids, Iowa. Her last day of work was on or about June 11. On June 12 the employer's property was flooded and no work was available for the claimant. There was substantial damage to the hotel property, but it began reopening on December 4, 2008. As of that date, of the 88 hotel rooms, 76 were ready for occupancy.

The employer ran an advertisement inviting former employees to reapply for employment. The claimant has been in contact with her direct supervisor, who advised her that at that time work was still slow and so the claimant was still not needed to return, but that there would be further communication.

REASONING AND CONCLUSIONS OF LAW:

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is

laid off due to the claimant's employer going out of business at the factory, establishment, or other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code § 96.3-5.

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 employer's business has not closed, and so the claimant is not entitled to a recalculation of benefits under the business closing provisions. However, the claimant most likely is entitled to extended unemployment insurance benefits, and the claimant's claim most likely is classifiable as one due to flood disaster, which would exempt the employer's account from charge. However, it does not appear that the claimant's claim was set up in that fashion. The matter is remanded to the Claims Section for reexamination and potential reclassification of the claimant's claim status.

DECISION:

The representative's November 26, 2008, reference 02, decision is modified with no effect on the parties. The claimant was not laid off due to a business closure but due to the flood disaster; the employer's business was not permanently closed. Recalculation of benefits is therefore not appropriate. The matter is remanded to the Claims Section for review of the claimant's claim classification.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css