

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY J WATERS
Claimant

APPEAL NO. 15A-UI-13784-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

OC: 11/01/15
Claimant: Appellant (1)

Section 96.3(5) – Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

Kelly Waters filed a timely appeal from the December 10, 2015, reference 01, decision that denied her request to have her benefit eligibility redetermined as being based on a layoff due to a business closing. After due notice was issued, a hearing was held on January 7, 2016. Ms. Waters participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of Workforce Development representative Kari Middleton's notes, dated December 9, 2015, regarding her investigation of the purported business closing.

ISSUE:

Whether the claimant was laid off pursuant to a business closing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelly Waters established an original claim for benefits that was effective November 1, 2015. At that time, Ms. Waters had most recently been employed by Aerotek, Inc., a temporary employment agency. Aerotek is located Davenport. In July 2015, Aerotek placed Ms. Waters in a full-time, temporary work assignment at C.H. Robinson in Bettendorf, where Ms. Waters performed truck dispatching duties. Ms. Waters completed the assignment on November 3, 2015. Prior to completing the assignment, Ms. Waters had asked C.H. Robinson to hire her directly. C.H. Robinson had initially indicated a willingness to hire Ms. Waters. A week later, while Ms. Waters was still in the temporary work assignment, C.H. Robinson notified Ms. Waters that it would not be hiring Ms. Waters because it intended to close its Bettendorf branch.

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.

The law specifies that a claim for benefits can only be redetermined as being based on a layoff pursuant to a business closing if the *employer* goes out of business. Ms. Waters' employer was Aerotek, not C.H. Robinson. Aerotek has not closed its Davenport office. Accordingly, Ms. Waters' benefit eligibility cannot be redetermined as being based on a layoff pursuant to a business closing.

DECISION:

The December 10, 2015, reference 01, decision is affirmed. The employer's business did not close. The claimant's request to have her benefit eligibility redetermined as being based on a layoff due to a business closing is denied.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css