

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA M LANDRY-KASPER
Claimant

APPEAL NO: 12A-UI-04681-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND INNS OF AMERICA LLC
Employer

OC: 12/11/11
Claimant: Appellant (1)

Iowa Code § 96.3(5) – Benefit Duration - Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 19, 2012 (reference 01) decision that denied the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on May 16, 2012. Claimant participated. Employer participated through former director of operations Sandy Minard.

ISSUE:

The issue is whether the claim can be redetermined based upon a layoff due to a business closing.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a guest services representative in the Iowa City location and was separated from the employment on December 6, 2011 when she was terminated because the business was sold on December 5, 2011 to another entity. That business continues to operate but did not offer continued employment to the claimant; nor did she seek continued employment with the new owner.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not laid off as a result of a business closure at the location where she was employed and, therefore, is not entitled to a redetermination of wage credits.

Iowa Code § 96.3(5) provides:

5. 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.

871 IAC 24.29(1) and (2) provide:

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. 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.

(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 administrative law judge concludes that the employer did not close the business in its Iowa City, Iowa location but simply sold the business to another entity that continues to operate at that location. Since there is still an ongoing business at that location, the business is not considered to have closed. Therefore, while claimant remains qualified for benefits based upon a layoff from this employer, she is not entitled to a recalculation of benefits.

DECISION:

The April 19, 2012 (reference 01) decision is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs