

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

Appeal Number: 06-IWDUI-112
OC: 02/26/06
Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

CAROLYN A CLARK
115 SOUTH VERMONT STREET
MAQUOKETA IA 52060

STATE CLEARLY

THE GANNON CENTER
ATTN: ACCOUNTING DEPARTMENT
200 MERCY DRIVE STE #200
DUBUQUE IA 52001

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

IOWA WORKFORCE DEVELOPMENT
CHARLES RUMMERY
590 IOWA STREET
DUBUQUE IA 52004

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

KAREN PFAB, IWD
DAN ANDERSON, IWD

(Administrative Law Judge)

May 19, 2006

(Decision Dated & Mailed)

Section 96.3-5 – Business Closing Benefits
871 IAC 24.29(2) – Business Closing Definition

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated April 20, 2006, reference 02, which held the claimant was not entitled to business closing benefits.

The hearing was held pursuant to due notice on May 16, 2006 by telephone conference call. The claimant participated. Charles Rummery, Auditor, participated on behalf of for Iowa Workforce Development. Mary Lou Ball, CEO, participated for The Gannon Center. Official Notice was taken of the claimant's appeal documentation received on May 12, 2006.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective February 26, 2006. The claimant last worked for The Gannon Center in their outpatient facility located in Jackson County, Iowa, as a clinical case manager. The claimant was laid-off due to employer financial difficulties, and there was no protest to the unemployment claim.

In November 2005, the department assigned Field Auditor Rummery to investigate claimant Lightcap's request for business closing benefits by reason of his layoff from The Gannon Center. Rummery contacted an employer representative, and he learned that a federal grant program funded the employer's general business operation. Recently, the employer learned that the grant would not be renewed, and that it was running out of money to fund the business operations.

The Gannon Center was still operational at the time of the department investigation though it was laying-off employees due to financial restrictions. Rummery submitted his investigative findings to the department. The department denied claimant Lightcap business closing benefits, and it used the November 2005 investigative findings to deny the claimant in this matter.

CEO Ball states that the Jackson County, Iowa outpatient office closed on March 31, 2006. Ball states that the only business that remains operational as of the date of this hearing is the Dubuque residential care facility. Ball states the employer does not object to the claimant receiving business closing benefits.

Although claimant Huenke was scheduled to participate in this hearing, she experienced telephone communication problems, and her hearing has been rescheduled for June 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is entitled to business closing benefits.

Iowa Code Section 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. 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.

871 IAC 24.29(96) Business closing.

24.29(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.

The administrative law judge concludes that the claimant is entitled to business closing benefits pursuant to 871 IAC 24.29(2), and Iowa Code section 96.3-5, because she was laid-off from

employment at a business office that has been permanently closed. It is apparent that the employer has systematically closed its business operations that were funded by a federal grant program. At the time Auditor Rummery investigated this matter involving claimant Lightcap in November 2005, the employer was operational, but in the process of cutting back its payroll due to a lack of funding. Apparently, the department did not have Rummery or any other Field Auditor re-investigate this matter when the claimant and other employees were laid-off in late February or early March 2006. The employer representative concurred with the claimant that she is entitled to business closing benefits. The Dubuque residential care facility is separate and unrelated to the business activity for which the claimant had been employed.

DECISION:

The decision of the representative dated April 20, 2006, reference 02, is REVERSED. The claimant is entitled to business closing benefits effective February 26, 2006.

rls