

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDACE A ORTON
Claimant

APPEAL NO: 19A-UI-02880-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAMONT LTD
Employer

OC: 09/30/18

Claimant: Appellant (4)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(5) – Layoff Due to Business Closing

STATEMENT OF THE CASE:

Candace A. Orton, the claimant filed an appeal from the fact-finder's October 17, 2018, reference 01 decision that denied her request to have her unemployment insurance claim redetermined as a business closing effective September 30, 2018. After due notice was issued, a telephone hearing was held on April 25, 2019. Claimant participated. Although the employer supplied a telephone number for witness Chelsea Wallace, the employer's witness was not available at the telephone number provided. Department Exhibit D-1, the administrative file was admitted into the hearing record.

ISSUES:

The first issue is whether the appeal filed in this matter was timely.

The second issue is whether the claimant request to have her claim redetermined as a business closing should be approved.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: A decision denying the claimant's request to have her claim redetermined as a business closing was mailed to the claimant's last known address of record on October 17, 2018. The claimant received the decision, however shortly before receiving the decision, Ms. Orton was called by a representative of Iowa Workforce Development who spoke to Ms. Orton about her request to redetermine her claim. During the telephone conversation, the representative stated to Ms. Orton "that in the future, if Ms. Orton believed that the employer had closed its facility she could then file an appeal." When Ms. Orton received the adjudicator's decision dated October 17, 2018, she believed that her appeal could be filed at a later date because of the statements that had been made to her by the agency representative. Later when Ms. Orton received new information that the employer was closing its facility effective April 25, 2019, she filed the original decision, believing that she had followed the instructions that had been given to her. Ms. Orton filed her appeal on April 5, 2019.

The administrative law judge concludes that Ms. Orton has established good cause for filing beyond the ten day statutory limitation based upon information that had been given to her by an agency representative. The claimant reasonably concluded that she could file her appeal at a later date and did so. The claimant's appeal is therefore considered timely.

After reviewing all the evidence in the record, the administrative law judge finds: Candace A. Orton was employed at Lamont LTD as a full-time product manager and quality assurance manager until October 3, 2018 when she was laid off due to a lack of work. The employer had announced to company workers that the facility would be permanently closing in the future and the company would be keeping a few employees to sell off inventory, etc. until the final closing of the facility in Burlington, Iowa. Ms. Orton was first authorized 26 weeks of unemployment insurance benefits based upon her being laid off from employment at that time.

Later, on or about April 5, 2019, Ms. Orton received a call from her former co-worker's establishing that the employer's facility was permanently closed effective April 25, 2019 at the work location where Ms. Orton had previously been employed, 1530 Bluff Rd., Burlington, Iowa 52601. This information was also confirmed by a manager from Lamont Limited who invited the claimant to be a part of final ceremony on April 25, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was laid off due to a business closure that would be effective April 25, 2019.

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.

Ms. Orton was initially laid off in a period of ramping down business operations and the business had not yet closed. It continued to operate at reduced staffing levels but based upon information provided by the employer, and former co-workers, April 25, 2019 was established as the effective closing date for the employer's facility at the work location where Ms. Orton had been employed by the company in Burlington, Iowa.

As the evidence in the record establishes that there has now been a business closing, claimant is entitled to a recalculation of her benefits at this time.

DECISION:

The representative's unemployment insurance decision dated October 17, 2018, reference 01 is modified. The portion of the determination denying the claimant's request to have her unemployment insurance claim redetermined as a business closing effective September 30, 2018 is affirmed. The decision is modified to find that the claimant's request to have her unemployment insurance claim redetermined as a business closing effective April 25, 2019 because the business has closed, claimant's request to have claim redetermined as a business closure is approved.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn