

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK W HAMPTON
Claimant

APPEAL NO: 07O-UI-05512-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE GRAND PLAN LLC
RESTAURANT 225 AT THE FIGGE
Employer

OC: 10/22/06 R: 04
Claimant: Appellant (2)

Iowa Code § 96.3(5) – Layoff/Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 26, 2007, reference 02, 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 June 14, 2007. Claimant participated. Employer did not participate but send a letter included in the record as Employer's Exhibit 1. Claimant's Exhibit A was received.

ISSUE:

The issue is whether the claim can be redetermined based upon 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 separated from the employment on October 11, 2006 when the restaurant closed that was housed within the Figge Art Museum. The employer leased the space from the museum. Catering contracts through the end of 2006 were honored and as of March 29, 2007 there was no restaurant operation at the art museum where this employer used to conduct business. (Claimant's Exhibit A) Employer does not dispute claimant's evidence. (Employer's Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a business closure.

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) provides:

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. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

871 IAC 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.

Since all restaurant and catering operations ceased at the leased restaurant space at the museum as of December 31, 2006, the business is considered to have closed. Therefore, while claimant remains qualified for benefits based upon a layoff from this employer, he is also entitled to a recalculation of benefits, which would add an additional 13 weeks of potential eligibility to his claim. Since he is already employed, that issue may be moot.

DECISION:

The March 26, 2007, reference 02, decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs