

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI A AZBILL
Claimant

APPEAL NO. 14A-UI-02368-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**A H MANAGEMENT
AH 2005 MANAGEMENT LP**
Employer

**OC: 03/24/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Jodi Azbill filed a timely appeal from the February 25, 2014, reference 05, decision that held her benefit eligibility would not be redetermined as being based on a business closing. After due notice was issued, a hearing was held on March 25, 2014. Ms. Azbill participated and presented additional testimony through Josselyn Mendoza. Leticia Marquez represented the employer. The hearing in this matter was consolidated with the hearing in appeal number 14A-UI-02341-JTT concerning claimant Josselyn Mendoza.

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: The claimant was employed by Pillar Hotels & Resorts /A H Management, L.P., doing business as Fairfield Inn in Waterloo, on a full-time basis until March 26, 2013, when she was laid off in connection with the sale of the business. The new owner, or some subsequent owner, continued to operate a hotel at the same location.

REASONING AND CONCLUSIONS OF LAW:

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. 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(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 evidence establishes that the claimant's layoff was not the result of a business closing within the meaning of the law. The layoff instead resulted from the sale of the business and the new owner, or some subsequent owner, continued to operate a hotel from the same location.

Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that the claimant's unemployment insurance benefits should not be determined based on a business closing.

DECISION:

The Claims Deputy's February 25, 2014, reference 05, decision is affirmed. The claimant was not laid off due to a business closing. The request to redetermine benefits is denied.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css