

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA A SANDERS
Claimant

TMONE LLC
Employer

APPEAL 15A-UI-09654-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/15
Claimant: Respondent (2)

Iowa Code § 96.3(5) – Benefit Duration – Business Closing
Iowa Admin. Code r. 871-24.29(1) and (2) – Business Closing

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 17, 2015, (reference 03) decision that allowed the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on September 10, 2015. Claimant did not participate. Employer participated through human resources generalist, VaTrice Moore. On behalf of the employer, Ms. Moore waived ten-day notice of any issues not listed on the notice for hearing, specifically Iowa Code § 96.3(5), that will be covered during the hearing.

ISSUE:

Is the claimant eligible to have the monetary determination recalculated due to business closing?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is currently employed as an agent for the employer. Claimant was hired on December 23, 2013 and has never had a period of unemployment from the employer since her hire date. The employer is still open and running operations. TMONE LLC was acquired by ERC after claimant's hire date, but all employees remained during the acquisition. Claimant has not received a temporary layoff. The employer is not planning on closing operations. Claimant has remained employed with the employer starting from December 23, 2013 and is currently still employed with the employer.

REASONING AND CONCLUSIONS OF LAW:

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

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. Moore testified claimant has continued to work for the employer since she was hired and the business has not closed since claimant was hired. Since there is still an ongoing business, the business is not considered to have closed. Therefore, claimant is not entitled to a recalculation of benefits.

DECISION:

The August 17, 2015, (reference 03) decision is reversed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied. If the entire business closes and ceases all operation at that location at some future date, claimant may reapply for recalculation.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css