

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDITH HARRIS
Claimant

APPEAL NO: 16A-UI-06535-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW FOCUS INC
Employer

OC: 04/03/16
Claimant: Appellant (1)

Iowa Code Section 96.3(5) – Layoff Due to Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 9, 2016, reference 03, decision that determined she was not laid off due to a business closing. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 28, 2016. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time day hab supervisor for New Focus from April 1997 to April 30, 2016. The employer sold the business to Tenco effective May 1, 2016, as a result of the privatization of the state's Medicaid system; which hindered the employer's ability to provide the services it offers. Tenco runs the business in the same location New Focus used. Tenco handed all New Focus' employees an application after the meeting when it took over May 1, 2016 and several weeks later interviewed the claimant. Several weeks after that it offered the claimant a part-time position in a site house but could not tell her where the site house would be located or what shift she would be working. The employer has several locations and the claimant was concerned about where she might be assigned as well as what hours she would be required to work. Additionally, she had never performed the type of work being offered before.

The issue of the subsequent part-time offer of employment from Tenco has been heard and adjudicated in the claimant's favor at the Claim's Section level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not laid off due to a business closure.

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(1) and (2) 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, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. 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.

(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 there is still an ongoing business of the same or similar nature at that location, the business is not considered to have closed within the meaning of the law. Therefore, while the claimant remains qualified for benefits based upon a layoff from this employer, she is not entitled to a recalculation of benefits. (Emphasis added).

DECISION:

The June 9, 2016, reference 03, decision is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits must be denied.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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