

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE S WARD
Claimant

APPEAL NO. 12A-UI-06644-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 01/29/12
Claimant: Appellant (2)

Section 96.3-5 – Layoff Due to Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 1, 2012, reference 03, which denied the claimant's request to have her claim redetermined as a business closing effecting January 29, 2012. After due notice was issued, a telephone hearing was held on June 28, 2012. The claimant participated. The employer did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Ms. Jackie Ward was employed by Packers Sanitation Services, Inc. from January 26, 2009, until January 1, 2012, when the company was sold to new owners and moved from its location in Mount Pleasant, Iowa. Ms. Ward worked as a full-time technical service assistant and was paid by salary. Her immediate supervisor was Tom Mitchell.

On January 1, 2012, Ms. Ward assisted in loading the remainder of the personal property of Packers Sanitation Services so that it could be moved to the state of Wisconsin, where new corporate owners were basing the company. Ms. Ward lives near the employer's former address in Mount Pleasant, Iowa, and has personally observed that Packers Sanitation Services no longer maintains any type of business presence and that the facility where the employer previously was located has been rented or sold to other businesses completely unassociated with Packers Sanitation Services.

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 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(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 the evidence in the record establishes that the employer has ceased doing business at that location and there is not a business presence, the administrative law judge concludes that

the business is considered to have closed. The claimant is entitled to a recalculation of unemployment insurance benefits effective January 29, 2012.

DECISION:

The representative's decision dated June 1, 2012, reference 03, is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw