

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY P STANEK
Claimant

APPEAL NO. 07A-UI-08948-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAKESIDE PERFORMANCE MARINE LC
Employer

OC: 07/29/07 R: 02
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 12, 2007, reference 02, 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 October 3, 2007. Claimant participated. Employer participated through Mark Bockenstedt. 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 August 3, 2007 after employer was notified in May from GE, the floor plan financing company, that the employer's credit line was insufficient and must be remedied or it would pull the boats. On July 11 employer told employees it had a line on another source of financing but gave no further updates thereafter. GE started pulling boats off the premises on July 30. Bennington Marine, boat supplier, notified employer on July 31 that it would no longer sell boats to employer because of financing concerns. On August 2, Whisenand, warranty manager, emailed partners Mark Bockenstedt and Skip Kaltenheuser (Don Davis was also a partner) indicating an interest in buying inventory and mentioned that Tauber, general manager, was removed from the business' bank account. She asked for an update from the July 10 communication about other financing and asked for direction. On August 3, Bockenstedt responded and said he and Don would be in touch "today" about getting keys but did not do so that day or thereafter. Claimant did not report for work after August 3 because there was no boat line, no credit line, and was told the business keys would be picked up. Parts and accessories were left in the store, but there were no boats for service and no new or used boats to sell. The security company said it was notified that the business was closed. Kaltenheuser contacted employees by e-mail in an attempt to locate Bockenstedt but none of the partners told any employee they should continue reporting to work after August 3.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was laid off as a result of the employer going out of business and, therefore, is entitled to a redetermination of wage credits.

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) and (2) provide:

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.

(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 administrative law judge concludes that the employer did go out of business in its Polk City, Iowa, location and that the claimant clearly did not quit. The claimant's testimony establishes that the employer did close its doors and cease doing any business (new or used boat sales or

service) at the premises on August 3, 2007, which is confirmed by Claimant's Exhibit A, employer's e-mail indicating it would retrieve business keys from employees but giving no further direction about financing or continuation of the business or employment. There is no evidence that the employer's premises was sold or transferred or that a successor employer will continue to operate a business at that location. Accordingly, the administrative law judge concludes that the employer has gone out of business effective August 3, 2007 and, as a consequence, the claimant is entitled to a redetermination of wage credits as of that date.

DECISION:

The September 12, 2007, reference 02, decision is affirmed. 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/kjw