

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY L WAGNER

Claimant

LETTER PERFECT DES MOINES INC

Employer

APPEAL 16A-UI-12442-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/02/16

Claimant: Respondent (1R)

Iowa Code § 96.3-5 – Benefit Duration – Business Closing

871 IAC 24.29(1) – Business Closing

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 14, 2016 (reference 01), that concluded the claimant was eligible for business-closing benefits. A telephone hearing was held on December 8, 2016. The parties were properly notified about the hearing. The claimant registered for the hearing but was not available when two calls were made to her at the number she registered with the Appeals Bureau. The administrative law judge was also unable to leave a voice message for the claimant at the number. Toni Urban participated in the hearing on behalf of the employer. Employer exhibit 1 was received. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible for business-closing benefits in addition to regular unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a manager for the employer for twenty years, and last performed work on September 28, 2016, when the claimant's employment ended due to the business closure, effective September 30, 2016. At the time of the claimant's separation, her family held a retirement party and she conveyed to Ms. Urban her plans to travel and spend time with her family upon separation.

The employer's business operated in a rented space at the Clocktower business park, located at 2900 University Ave in West Des Moines, Iowa. The space is vacant, and unoccupied by any business.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was laid off from her employment and is 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.

Iowa Admin. Code r. 871-24.29(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, 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.

Iowa unemployment insurance law provides additional benefits for claimants laid off due to their employer going out of business at the factory, establishment, or other premises at which they were last employed. Iowa Code § 96.3-5. The evidence presented is that the claimant worked for twenty years as the manager, and the employer's business ceased operations effective September 30, 2016. The building for where it conducted business, located at 2900 University Ave in West Des Moines, Iowa, is vacant.

Since there is not still an ongoing business at that location, (for any employer), the business is considered to have closed. Based on the evidence presented, the claimant was indeed laid off, and that the layoff was the result of a business closure within the meaning of the unemployment insurance law. Therefore, the claimant remains qualified for benefits based upon a layoff from this employer, and she is entitled to a recalculation of benefits.

REMAND:

The issue of whether the claimant is able to, available for and actively seeking work as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The unemployment insurance decision dated November 14, 2016 (reference 01) is affirmed. The claimant is entitled to have her claim redetermined as a layoff due to a business closing.

REMAND:

The able to and available for work issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs