

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNETTE A MUSSACK
Claimant

APPEAL NO: 11A-UI-03630-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BOYS & GIRLS RESIDENTIAL
TREATMENT CENTER INC**
Employer

OC: 08/08/10
Claimant: Respondent (2)

Section 96.3-5 – Business Closing
871 IAC 24.29(2) – Definition of Closing

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 11, 2011, reference 01, that allowed claimant's request for business closing benefits effective August 8, 2010. A telephone hearing was held on April 13, 2011. The claimant participated. Roger Bentz, HR Vice President, participated for the employer. Claimant Exhibits A & B, and Employer Exhibits 1 & 2 was received as evidence.

ISSUE:

Whether claimant was laid-off due to a business closing.

FINDINGS OF FACT:

The administrative law judge having heard witness testimony and having considered the evidence, finds: The claimant was employed by Boys and Girls Home and Family Services, Inc that is the parent company of the subsidiary, Boys and Girls Residential Treatment Center, Inc (employer tax account number #075408). Claimant was employed as a full-time HR assistant at the employer administrative office. Claimant was laid-off for lack of funding/RIF on August 10, 2010. The administrative offices continued to remain open.

The claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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(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.

The administrative law judge concludes the claimant was laid-off for lack of work that is not due to a business permanently closed on August 10, 2010.

The employer is not contesting claimant's unemployment benefit due to a lay-off. The lay-off was due to a funding/RIF issue not the closing of the employer administrative office where she last worked.

DECISION:

The department decision dated March 11, 2011, reference 01, is reversed. The claimant was laid-off on August 10, 2010, but it is not due to a business closing. Business closing benefits are denied, but regular benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs