

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA P CARSON
Claimant

APPEAL NO. 17A-UI-06303-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON TRANSPORTATION CO INC
Employer

OC: 04/02/17
Claimant: Appellant (1)

Iowa Code Section 96.3(5) – Duration of Benefits
Iowa Administrative Code rule 871-24.29 – Business Closing

STATEMENT OF THE CASE:

Victoria Carson filed a timely appeal from the June 19, 2017, reference 06, decision that denied her request to have her claim for benefits redetermined as being based on a lay-off due to a business closing. After due notice was issued, a hearing was held on July 7, 2017. Ms. Carson participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate.

ISSUE:

Whether the claimant was laid off pursuant to a business closing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Victoria Carson was employed by Jacobson Transportation Company, Inc. as a full-time freight payment specialist from 2002 until December 9, 2016, when the employer laid her off. A couple years prior to the layoff XPO Logistics purchased and began to operate the employer business. Ms. Carson performed her work duties at an office building located on 128th Street in Clive. The building housed several of the employer's administrative departments. The employer eliminated multiple departments at that location and transferred the associated duties to another XPO Logistics facility. The departments eliminated at the Clive location included the freight payment department in which Ms. Carson worked. However, the new employer continued to conduct business from the same Clive location.

REASONING AND CONCLUSIONS OF LAW:

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.

The evidence in the record establishes that Ms. Carson was laid off in December 2016 as part of a business reorganization that eliminated some, but not all departments at the employer's Clive location. The layoff was not pursuant to a business closing within the meaning of the law because the employer continued to conduct business from the same Clive location.

Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Ms. Carson is not eligible to have her unemployment insurance benefits redetermined as being based on a layoff pursuant to a business closing.

DECISION:

The June 19, 2017, reference 06, decision is affirmed. The claimant was laid off, but not pursuant to a business closing. The claimant remains eligible for regular unemployment insurance benefits provided she meets all eligibility requirements. However, the claimant is not eligible to have her unemployment insurance benefits redetermined as being based on a layoff pursuant to a business closing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs