

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD T FLORENCE
Claimant

APPEAL NO. 06A-UI-10877-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-STATES FORD INC
Employer

OC: 01/15/06 R: 02
Claimant: Appellant (1)

Section 96.3-5 – Layoff Due to Business Closing

STATEMENT OF THE CASE:

Donald Florence (claimant) appealed a representative's November 6, 2006 decision (reference 01) that determined that his request to have his unemployment insurance claim redetermined as a business closing was denied. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 28, 2006. The claimant participated personally. Mid-States Ford (employer) did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUE:

The issue is whether the claimant was laid off due to business closure.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in October 2001, as a full-time finance insurance manager. On January 13, 2006, the employer laid the claimant off for lack of work along with numerous other employees. The employer sold its business operation to another owner. On January 18, 2006, the new employer continued operation at the same location.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not laid off from work due to 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(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.

Going out of business means any factory, establishment, or other premises of an employer which closes its door, ceases to function as a business. The claimant's testimony establishes that the employer closed its doors. The evidence also shows that the employer's premises was sold or transferred and a successor employer continued to operate the business. Accordingly, the administrative law judge concludes that the employer is not considered to have gone out of business. The claimant was not laid off due to his employer going out of business and he is, therefore, not entitled to a recomputation of his wage credits.

DECISION:

The representative's November 6, 2006 decision (reference 01) is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw