

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON S MCPHERSON
Claimant

APPEAL NO: 18R-UI-06926-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERLINE BRANDS INC
Employer

OC: 12/03/17
Claimant: Appellant (2)

Iowa Code § 96.3-5 - Duration of Benefits (Employer going out of business at business location/Recomputation of Wage credits)

STATEMENT OF THE CASE:

The claimant, Jason S. McPherson, filed a timely appeal from an unemployment insurance decision dated May 7, 2018, (reference 01) which denied his request to have his unemployment insurance claim redetermined as a business closing. After due notice was issued, a telephone hearing was held on May 30, 2018, however Ms. McPherson could not be reached at the telephone number that he had provided. On June 1, 2018, the administrative law judge decision was entered affirming the adjudicator's decision. Mr. McPherson filed an appeal with the Employment Appeal Board. The Employment Appeal Board determined that Mr. McPherson had been unable to participate through no fault of his own and remanded the matter back to the Appeal Bureau's for a new due process hearing and decision in compliance with the Employment Appeal Board's directive, notices were sent to the parties for a telephone hearing scheduled for 11:00 a.m. on July 12, 2018. Mr. McPherson participated. The Employer indicated that they would not be participating and did not participate. The administrative law judge took official notice of the Iowa Employment Security law, the Iowa administrative code, Mr. McPherson's administrative file and agency benefit payment records.

ISSUE:

The issue is whether the claimant was laid off due to a business closing and therefore eligible to have his wage credits recomputed.

FINDINGS OF FACT:

Having heard the testimony of the witness and having considered all the evidence in the record, the administrative law judge finds Jason McPherson began employment with Interline Brands, Inc. on October 27, 2014 and continued to be employed by the company until October 25, 2017, when he was laid off permanently.

Mr. McPherson worked as a full-time inventory control specialist and was paid by the hour. Mr. McPherson's work location for Interline Brands, Inc. was 5801 16th Avenue, Cedar Rapids, Iowa.

The contract supply plumbing fixtures to a client company had expired and was not renewed. Interline Brands, Inc. removed all inventory and all other company assets from the 5801 16th Avenue, Cedar Rapids, Iowa location where Mr. McPherson was employed as the only worker.

Since the company has ceased doing business with the Ben Franklin Company due to the loss of the contract and has removed all of its inventory and other assets from the work location it has not sold the business location to new owners.

Mr. McPherson assisted in the removal of company inventory and other assets during the weeks leading up to his lay off. It is Mr. McPherson's belief that the facility where he was employed at 5801 16th Avenue, Cedar Rapids, Iowa was the only business location operated by Interline Brands, Inc. in the state of Iowa. At the time of his separation from employment, Mr. McPherson was paid 60 days severance pay.

REASONING AND CONCLUSIONS OF LAW:

The issue presented in this appeal is whether the claimant was laid off due to his employer went out of business at the business location where Mr. McPherson was employed, and therefore entitled Mr. McPherson to have his wage credit recomputed. The administrative law judge concludes that the preponderance of the evidence in the record establishes that the claimant was laid off as a result of the employer going out of business at the business location where Mr. McPherson was employed, and, therefore, he is entitled to a recomputation of his 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(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 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 administrative law judge concludes that the employer has ceased to do business at the premises 5801 16th Avenue, Cedar Rapids, Iowa. The evidence establishes that the claimant is entitled to a recomputation of his wage credits. There is no evidence that Interline Brands, Inc. sold or transferred its business to a successor employer who continued to operate the business, therefore, the administrative law judge concludes that the employer is considered to have gone out of business and as a consequence, Mr. McPherson's lay off was due to a business closure and he is entitled to a recomputation of his wage credits.

DECISION:

The representative's unemployment insurance decision dated May 7, 2018, reference 01 is reversed. The claimant, Jason S. McPherson is entitled to have his unemployment insurance claim redetermined as a business closing, including a recomputation of his wage credits. Claimant's request for such redetermination and recomputation is granted.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn