

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE BABNIK
Claimant

APPEAL NO. 10A-EUCU-00289-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEAVY LIFT & ENGINEERING
COMPANY INC**
Employer

OC: 09/20/09
Claimant: Appellant (1)

Iowa Code § 96.3(5) – Layoff Due to Business Closing

STATEMENT OF THE CASE:

Michelle Babnik (claimant) appealed a representative's March 29, 2010 decision (reference 01) that determined that her request to have her 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 May 25, 2010. The claimant participated personally. Heavy Lift Engineering Company (employer) provided a telephone number but did not answer the telephone or return the administrative law judge's call before the end of the hearing. It did not participate in the hearing.

ISSUE:

The issue is whether claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in the year 2000, as a full-time office manager. On September 30, 2009, the employer laid the claimant off for lack of work because the office closed. The employer sold the building and a business is operating in the employer's location.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not laid off due to a business closure.

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(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. 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.

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.

Since there is still an ongoing business at that location, the business is not considered to have closed. Therefore, while claimant remains qualified for benefits based upon a layoff from this employer, she is not entitled to a recalculation of benefits.

DECISION:

The representative's March 29, 2010 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/pjs