

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY A EFKAMP
Claimant

APPEAL NO. 12A-UI-06286-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KECK ENERGY
KECK INC**
Employer

**OC: 04/01/12
Claimant: Appellant (1)**

Section 96.3(5) – Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 23, 2012, reference 02, decision that found the claimant's layoff not to be based on a business closing and denied a request to redetermine benefits. After due notice was issued, a hearing was held on June 21, 2012. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-06285-JTT, concerning claimant Isabel Grunert. Exhibits One and A were received into evidence.

ISSUE:

Whether Mr. Efkamp 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: Jeffrey Efkamp worked as the manager of a convenience store, Petropointe, Inc., and a Maid-Rite restaurant located at 11408 Forest Avenue in Clive. The two businesses were located in separate areas of the same building and shared a hallway. On December 30, 2011, the employer permanently closed the Maid-Rite restaurant and laid off the restaurant employees. Mr. Efkamp continued as manager of the Petropointe store until March 27, 2012, when the employer ceased operations there and sold the location to Git-N-Go, which continued to operate a convenience store at the same location. Mr. Efkamp was laid off in connection with Petropointe ceasing operations.

REASONING AND CONCLUSIONS OF LAW:

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.

The weight of the evidence indicates that Mr. Efkamp was laid off in connection with the sale of the business location on March 27, 2012. The weight of the evidence indicates that the layoff was not based on a business closing as defined by the administrative rule because the business assets were sold and a new business, Git-N-Go, continued to operate at the same location. The claimant's request to have benefits redetermined as being based on a business closing is denied.

DECISION:

The Agency representative's decision dated May 23, 2012, reference 02, is affirmed. The claimant's layoff was not based on a business closing. The claimant's request to have benefits redetermined as being based on a business closing is denied.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw