

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE K ZHORNE
Claimant

APPEAL NO: 12A-UI-07684-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROSS HOLDINGS LLC
Employer

OC: 01/22/12
Claimant: Respondent (2)

Section 96.3-5 – Business Closing
871 IAC 24.29 – Definition of Closing

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 21, 2012, reference 03, that allowed claimant's request for business closing benefits effective January 22, 2012. A telephone hearing was held on July 19, 2012. The claimant did not participate. Diana Roberts, corporate office manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether claimant was laid off due to a business closing.

FINDINGS OF FACT:

The administrative law judge, having heard the stipulation of the parties finds: The claimant e-mailed his two-week notice to the employer on January 22, 2012, stating he had accepted a position at another company where he would begin employment on February 6. Although claimant stated his concern about receiving his PTO time, he said nothing about leaving other than for other employment. Claimant last worked for the employer at the Hiawatha unit on January 23. The employer advised the Hiawatha employees it was closing that business location on January 26.

The claimant failed to respond to the hearing notice.

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.

The administrative law judge concludes the claimant was not laid off for lack of work due to a business permanently closed on January 22, 2012, and business closing benefits are denied.

The claimant gave employer notice on January 22 he was leaving due to accepting other employment and there is no mention he was leaving for any other reason. Since the employer had given no advance notice to employees, the business closing was not disclosed until January 26, which is after claimant left employment.

DECISION:

The department decision dated June 21, 2012, reference 03, is reversed. The claimant was not laid off on January 22, 2012, due to a business closing. Business closing benefits are denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw