

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTY T GOODE
Claimant

SOUTH SIDE FOODS INC
Employer

APPEAL NO. 19A-UI-07958-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Appellant (1)

Iowa Code Section 96.3(5) – Duration of Benefits
Iowa Admin. Code r. 871-24.29 – Business Closing

STATEMENT OF THE CASE:

Christy Goode filed a timely appeal from the October 2, 2019, reference 01, decision that denied her request to have her benefit eligibility redetermined as being based on a layoff pursuant to a business closing. After due notice was issued, a hearing was held on October 31, 2019. Ms. Goode participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether the claimant 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: Christy Goode was employed by South Side Foods, Inc., doing business as Nick's Tenderloin, as a food server. The business is located at 1106 Army Post Road. Ms. Goode last performed work for the employer on August 5, 2019. On August 7, 2019, the business owner, Nick Iaria, notified Ms. Goode and other front-of-the-house staff that he was selling the business and did not know whether the new owner would keep the front-of-the-house staff. From that point, the employer no longer had work for Ms. Goode and she was laid off. Following the employer's sale of the business to the new owner, the new owner temporarily closed the business for remodeling, but then reopened in the same location. The new owner continues to operate the business from the same location whether Ms. Goode performed her work duties.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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(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 evidence establishes that Ms. Goode was laid off effective August 7, 2019, but that the layoff was not pursuant to a business closing within the meaning of the law. Instead, the layoff occurred in the context of the sale of the business. The business did not permanently close. Instead, the business temporarily closed for remodeling and then reopened in the same location under the new owner. Ms. Goode is not eligible to have her unemployment insurance benefit eligibility redetermined as being based on a layoff pursuant to a business closing.

DECISION:

The October 2, 2019, reference 01, decision is affirmed. The claimant's layoff was not pursuant to a business closing. The claimant is not eligible to have her unemployment insurance benefit eligibility redetermined as being based on a layoff pursuant to a business closing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn