

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY L KELLY
Claimant

APPEAL NO. 08O-UI-07936-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASR INTERNATIONAL CORP
Employer

OC: 03/30/08 R: 02
Claimant: Appellant (2)

Section 96.3(5) – Business Closing

STATEMENT OF THE CASE:

The claimant, Jeremy Kelly, filed an appeal from a decision dated June 18, 2008, reference 01. The decision denied the claimant's request to redetermine the claim as a business closing. After due notice was issued, a hearing was held by telephone conference call on September 17, 2008. The claimant participated on his own behalf. The employer, ASR International Corporation (ASR), participated by Human Resources Manager Mike Quaglino.

ISSUE:

The issue is whether the claim should be redetermined as a business closing.

FINDINGS OF FACT:

Jeremy Kelly was employed by ASR from October 3, 2005 until March 28, 2008 as a full-time quality clerk. ASR had been contracted by the United States Postal Service to monitor another contractor, Dyncorp, which processed mail. The United States Postal Service did not renew the contract with ASR and the claimant was laid off as a result. Dyncorp is still functioning at the same address where Mr. Kelly worked. Human Resources Manager Mike Quaglino does not believe another business was contracted by the United States Postal Service to monitor Dyncorp, but postal employees are doing the quality control monitoring. Currently ASR is not conducting any business in the state of Iowa.

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.

ASR did cease its operations at Dyncorp for the United States Postal Service in March 2008. The business was not transferred to another independent contractor but was assumed by the postal service. ASR did not sell its assets to another company and currently does not have any business operations in Iowa. Under these conditions the administrative law judge concludes ASR did close its doors and cease to operate as a business. Therefore the claim should be redetermined as a business closing.

DECISION:

The representative's decision of June 18, 2008, reference 01 is reversed. The claimant's request for redetermination of the claim as a business closing is granted.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css