

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY D OAKES

Claimant

APPEAL NO. 12A-UI-06259-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINDAMAN ENTERPRISES INC

Employer

OC: 01/29/12

Claimant: Respondent (2)

Iowa Code § 96.3(5) – Benefit Duration – Business Closing
Iowa Admin. Code r. 871-24.29(1) and (2) – Business Closing

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 24, 2012 (reference 03) decision that allowed the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on June 22, 2012. Claimant did not respond to the hearing notice instructions and did not participate. Employer participated through owner, Greg Lindaman.

ISSUE:

Can the claim be redetermined based upon a layoff due to a business closing?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed at the Orange Julius in Southridge Mall in Des Moines where there is no longer a food court. The business' lease was not renewed on January 29, 2012 as Southridge Mall no longer has a food court but remains in business. Prior to that date Lindaman offered claimant a job at the Jordan Creek or Valley West Mall Orange Julius stores in West Des Moines. Claimant declined saying she would "go a different route" and not work there any longer. Claimant filed her claim for benefits with an effective date of January 29, 2012.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not laid off as a result of a business closure at the location where she worked and, therefore, is not entitled to a redetermination of wage credits.

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.

Iowa Admin. Code r. 871-24.29(1) and (2) provide:

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.

(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 the Southridge Mall 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 May 24, 2012 (reference 03) decision is reversed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css