

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MCKENZIE L MCINTOSH
Claimant

APPEAL NO. 19A-UI-06144-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA PHYSICIANS CLINIC MEDICAL
FOUNDATION**
Employer

OC: 07/07/19
Claimant: Appellant (1)

Iowa Code Section 96.3(5) – Duration of Benefits
Iowa Administrative Code Rule 871-24.29 – Business Closing

STATEMENT OF THE CASE:

McKenzie McIntosh filed a timely appeal from the July 29, 2019, reference 01, decision that denied her request to have her unemployment insurance benefit eligibility redetermined as being based on a layoff pursuant to a business closing. After due notice was issued, a hearing was held on August 28, 2019. Ms. McIntosh participated. The employer did not comply with the hearing notice instructions to register a telephone for the appeal hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency field auditor's notes regarding their investigation into whether the employer's business had closed.

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: McKenzie McIntosh was employed by Iowa Physician's Clinic Medical Foundation/Unity Point as full-time Licensed Practical Nurse. Ms. McIntosh performed her work duties at a family medicine clinic located at Clark County Hospital in Osceola. Ms. McIntosh was laid off in connection with Unity Point ceasing operation of the family medical clinic and Clark County Hospital taking over operations at the same family medical clinic. Ms. McIntosh had a relative who was already employed with Clark County Hospital and the new employer elected not to employ Ms. McIntosh due to its anti-nepotism policy.

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. McIntosh was laid off, but not pursuant to a business closing within the meaning of the law. The family medical clinic where Ms. McIntosh was employed did not close its doors. Instead, operation of the medical clinic transferred from Unity Point to Clark County Hospital, which continued to operate the same medical clinic in the same location. Ms. McIntosh is not eligible to have her unemployment insurance benefit eligibility redetermined. The request to have the eligibility redetermined is denied.

DECISION:

The July 29, 2019, reference 01, decision is affirmed. The claimant's layoff was not pursuant to a business closing within the meaning of the law. The claimant is not eligible to have her unemployment insurance benefit eligibility redetermined as being based on a layoff pursuant to a business closing. The request to redetermine benefits is denied.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs