

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JOSHUA L ANDERSON
Claimant

TLH CLEANING LLC
Employer

APPEAL NO. 22A-UI-15487-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/03/22
Claimant: Respondent (2)**

Iowa Code Section 96.3(5) – Business Closing

STATEMENT OF THE CASE:

On July 21, 2022, the employer filed a timely appeal from the July 14, 2022 (reference 01) decision that held the claimant's benefit eligibility would be redetermined as being based on a layoff pursuant to a business closing. After due notice was issued, a hearing was held on September 1, 2022. Joshua Anderson (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Ted Hammes represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record reflects not benefits have been paid to the claimant in connection with the claim. Exhibit 1, the appeal letters, was into evidence. The administrative law judge took official notice of the Verification of Business Closing document. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-15488-JT-T.

ISSUES:

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:

Ted Hammes is President and owner of TLH Cleaning, L.L.C. TLH Cleaning, L.L.C. is but one of three businesses Mr. Hammes owns. All three businesses have contracts with the Iowa Department of Transportation to provide janitorial services at Iowa highway and Interstate rest stops. During the claimant's employment, TLH had contracts to clean and provide snow removal at three rest stops: south of Victor at mile marker 208, I-80 near Adair, and I-35 south of Story City. The Adair and Story City facilities were about 100 miles from the Victor location.

Joshua Anderson (claimant) was employed by TLH Cleaning, L.L.C. as a full-time Rest Area Attendant from September 2021 until June 30, 2022, when employer laid him off. The claimant was assigned to the Adair location. The work hours were 5:00 a.m. to 1:00 p.m. and occasionally from 1:00 p.m. to 9:00 p.m. The claimant was scheduled to work four or five days a week. The claimant's wage was \$13.00 an hour.

The rest area location contracts with IDOT were subject to a bidding process every four or five years. TLH's contract pertaining to the Victor location terminated effective June 30, 2022. A different contractor was awarded the contract for the Victor location for the period beginning July 1, 2022 and commenced providing the same services at that location as TLH Cleaning had hitherto provided at that location. The new contract holder did not offer the claimant work at the Victor location. Mr. Hammes had directed the claimant's supervisor to mention the possibility of work at the Adair or Story City locations, but Mr. Hammes does not believe the supervisor had such discussion with the claimant. The employer concedes it would likely not have been feasible for the claimant to commute the 100 miles distance to those other locations.

Though TLH no longer serves the Victor location, it continues to serve the Adair and Story City facilities.

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 sixteen 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 twenty-six 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 claimant was laid off effective June 30, 2022, but the layoff was not pursuant to a business closing within the meaning of the law. The employer operated as a vendor at the Victor location pursuant to a contract with the Iowa Department of Transportation. Though TLH's contract for that location expired effective June 30, 2022, the Iowa Department of Transportation continued

to operate from the same location and a new janitorial contractor continued to operate from the same location. Though TLH did not sell its business operations pertaining to the Victor location, the right to conduct janitorial business at that location transferred to a new vendor who continued to operate from the same location. Accordingly, the claimant is not eligible to have his eligibility for benefits redetermined as being based on business closing. The claimant remains eligible for benefits pursuant to the normal parameters, provided the claimant meets all other eligibility requirements.

DECISION:

The July 14, 2022 (reference 01) decision is REVERSED. The claimant was laid off effective June 30, 2022, but the layoff was not pursuant to a business closing within the meaning of the law. The claimant is not eligible to have his eligibility for benefits redetermined as being based on business closing. The claimant remains eligible for benefits pursuant to the normal parameters, provided the claimant meets all other eligibility requirements.



James E. Timberland
Administrative Law Judge

October 4, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.