

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**AUDRA N BALES**

Claimant

**APPEAL NO: 18A-UI-07330-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VARICOSE VEIN CENTER INC**

Employer

**OC: 07/01/18**

**Claimant: Appellant (1)**

Iowa Code Section 96.3(5) – Layoff Due to Business Closing

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 6, 2018, reference 01, decision that determined the claimant was not laid off due to a business closing. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 26, 2018. The claimant participated in the hearing. The employer chose not to participate in the hearing.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time surgical technician for Varicose Vein Center from October 2015 to June 29, 2018. The employer/doctor owned Varicose Vein Center and Westown Ambulatory which were located in the same building. The employer/doctor retired and sold the business to Mid-States Pain Management which brought its own staff. Mid-States' practice took over the clinic area of the building and it continued operating Westown Ambulatory.

**ISSUE:**

The issue is whether the claim can be redetermined based upon a business closing.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not laid off due to a business closure.

Iowa Code § 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(1) provides:

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, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. 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. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

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 employer/doctor retired and sold the business to Mid-States Pain Management. Mid-States took over the clinic and also continues to operate Westown Ambulatory. Since there is still an ongoing business at that location, the business is not considered to have closed. Therefore, while the claimant remains qualified for benefits based upon a layoff from this employer, she is not entitled to a recalculation of benefits.

**DECISION:**

The July 6, 2018, reference 01, decision is affirmed. The claimant was not laid off due to a business closure under the definition of business closure in Iowa law. Recalculation of benefits is denied.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs