

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA LESTER
Claimant

APPEAL NO. 06A-UI-11736-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

I & R INC
Employer

**OC: 04/30/06 R: 01
Claimant: Appellant (1)**

Section 96.3-5 – Business Closing

STATEMENT OF THE CASE:

Pamela Lester (claimant) appealed an unemployment insurance decision dated December 1, 2006, reference 02, which held that which denied her request to have her claim redetermined due to a business closing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 21, 2006. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant became unemployed as a result of her employer going out of business?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 26, 2002 as a full-time office manager and was laid off on May 1, 2006 due to financial problems. The employer continued to operate its business at the same physical location after May 1, 2006. In September 2006, the employer temporarily closed its doors due to the loss of a large account.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether the claimant became unemployed as a result of her employer going out of business.

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(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. 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.

The determination as to whether an individual is unemployed as a result of a business closing is typically made in relation to the location where the individual was last employed. In other words, the inquiry is whether the employer has gone out of business at the factory, establishment or other premises where the individual was last employed. However, in the case herein, the claimant was not laid off due to a business closing. She was laid off due to financial problems and the employer continued to operate its business after her lay off. What the employer may have done three or four months later is not determinative. The claimant's separation was not due to a business closing.

DECISION:

The unemployment insurance decision dated December 1, 2006, reference 02, is affirmed. The claimant was laid off due to financial reasons, and the employer continued to operate a business at that same physical location after the lay off. Her claim should not be recalculated based on a business that has permanently closed its doors.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw