

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LETISHA B YOUSUF
Claimant

APPEAL NO. 15A-UI-09655-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TMONE LLC
Employer

OC: 04/12/15
Claimant: Respondent (2)

Section 96.3(5) – Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 17, 2015, reference 05, decision that allowed benefits to the claimant provided she was otherwise eligible, that held the employer's account could be charged for benefits, and that allowed the claimant's benefits to be redetermined as being based on a layoff pursuant to a business closing. After due notice was issued, a hearing was held on September 14, 2015. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Vatrice Moore represented the employer.

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: Latisha Yousuf began her employment with TmOne, L.L.C, in 2012 and continues in the employment. During Ms. Yousuf's employment, the employer relocated from one site in the Des Moines metropolitan area to another. However, there was not break in the employment and no separation from the employment.

The claimant established a claim for benefits that was effective April 12, 2015. The claimant received benefits for the weeks that ended April 28, May 23 and May 30, 2015. The employer is the claimant's sole base period employer.

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 the claimant was not laid off pursuant to a business closing. The claimant is not eligible for redetermination of benefits as being based on a layoff pursuant to a business closing.

DECISION:

The August 17, 2015, reference 05, decision is reversed. The claimant was not laid off due to a business closing and her benefits shall not be redetermined as being based on a layoff pursuant to a business closing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css