

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY A CARMICHAEL
Claimant

APPEAL NO: 18A-UI-07671-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NSK CORPORATION
Employer

**OC: 07/01/18
Claimant: Appellant (1)**

Iowa Code § 96.3(5) -- Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 12, 2018, (reference 01) unemployment insurance decision which denied the claimant's request to have his unemployment claim redetermined as a business closing. The parties were properly notified about the hearing. A telephone hearing was held on August 7, 2018. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, 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 was laid off due to a business closing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a unit coordinator and was separated from employment on April 15, 2018, when he was discharged from employment (See reference 02 decision).

The claimant's department was in the process of being relocated to Mexico when he was discharged. He was not laid off due to a lack of work or due to the employer closing its Clarinda, Iowa location where the claimant worked.

REASONINGS AND CONCLUSIONS OF LAW:

The issue presented in this appeal is whether the claimant was laid off due to the employer going out of business and is entitled to have his wage credits recomputed. The administrative law judge concludes that the claimant was not laid off as the result of the employer going out of business at the location where the claimant was last employed. Therefore, he is not entitled to a recalculation of his wage credits.

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(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 administrative law judge concludes that the employer did not go out of business at its Clarinda, Iowa location. Going out of business within the meaning of the Iowa Employment Security Law means any factory, establishment, or premises of an employer which closes its doors and ceases to function as a business. The claimant's testimony establishes that the employer was in the process of relocating one department (where the claimant worked) to Mexico when he was discharged. No evidence was presented that the claimant was laid off due to a lack of work, or that the Clarinda, Iowa closed its premises. Accordingly, the administrative law judge concludes the claimant's separation was not due to a permanent business closing and he is not entitled to a recomputation of his wage credits.

DECISION:

The representative's decision dated July 12, 2018, (reference 01), is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn