

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN D LIPKOWITZ
Claimant

APPEAL NO. 15A-UI-02626-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NICHOLS ALUMINUM INC
Employer

OC: 01/18/15
Claimant: Appellant (1)

Iowa Code § 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation of Wage Credits)

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 24, 2015, reference 01, which held claimant ineligible for business closing benefits pursuant to Iowa Code § 96.3-5 insurance benefits. After due notice, a hearing was scheduled for and held on March 31, 2015. Claimant participated personally. Employer participated by Robin McCallister.

ISSUE:

The issue presented in this appeal is whether the claimant was laid off due to the employer going out of business and, therefore, is entitled to have the wage credits re-computed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off by employer on December 30, 2014 because the employer for which claimant worked was bought out by another company and claimant's position was eliminated.

Claimant worked in inside sales for employer. The new company who'd taken over for the employer was no longer employing inside sales associates in the Davenport office. Claimant was given no opportunities with the new company other than moving to Ohio; which she declined. The company in Davenport stayed open, under new ownership, but maintaining the same name for union contract purposes.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the claimant was not laid off as a result of the employer going out of business and, therefore, is not entitled to a re-computation of 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 26 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 re-compute 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.

As employer's business did not close, claimant is not entitled to the recalculation of benefits commensurate with a business closure. This is true even though claimant's particular job no longer existed.

DECISION:

The decision of the representative dated February 24, 2015, reference 01, is affirmed. The claimant is not entitled to have the unemployment insurance claim re-determined as a business closing, including a re-computation of wage credits. The claimant's request for such re-determination and re-computation is denied.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/can