

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE M WEHDE
Claimant

APPEAL NO. 07A-UI-10340-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW HORIZON FS INC
Employer

**OC: 09/09/07 R: 03
Claimant: Appellant (2)**

Section 96.3(5) – Business Closing

STATEMENT OF THE CASE:

The claimant, Diane Wehde, filed an appeal from a decision dated November 2, 2007, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 27, 2007. The claimant participated on her own behalf and with a witness Tom Salrin. The employer, New Horizon, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was laid off due to a business closing.

FINDINGS OF FACT:

Diane Wehde was employed by New Horizon from March 28, 2006 until August 31, 2007, as a full-time assistant comptroller. She worked at a location on South Street in Tipton, Iowa, which was the regional office for the employer. No actual storage or sale of product was done at that location.

New Horizon merged with Agravantage FS and the regional office for the new business was moved to Waverly, Iowa. The location of the former regional office in Tipton, Iowa, is currently vacant and the building is up for sale.

REASONING AND CONCLUSIONS OF LAW:

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(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 claimant was laid off when the location where she last worked was closed and the regional office moved to another city. Under the provisions of the above Code and Administrative Code section the business where the claimant last worked has closed its doors and ceased to function as a business. The claim should be redetermined accordingly.

DECISION:

The representative's decision of November 2, 2007, reference 02, is reversed. Diane Wehde was laid off due to a business closing and the claim shall be redetermined.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css