

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BEVERLY S NICOL
4232 E SHAULIS RD
WATERLOO IA 50701

SEARS ROEBUCK & CO
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-02592-RT
OC: 08/28/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-5 – Duration of Benefits (Employer Going Out of Business/Recomputation of Wage Credits)

STATEMENT OF THE CASE:

The claimant, Beverly S. Nicol, filed a timely appeal from an unemployment insurance decision dated February 22, 2006, reference 02, which determined that the claimant's request to have her unemployment insurance claim redetermined as a business closing was denied. After due notice was issued, a telephone hearing was held on March 21, 2006, with the claimant participating. The employer, Sears Roebuck & Company, did not participate in the hearing because the employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. Further, the administrative law judge received a letter from the employer's

representative, TALX UC eXpress, stating that the employer would not be participating in the hearing. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer from October 28, 1975, until she was laid off for a lack of work on August 27, 2005 when her department closed. The claimant was employed at the employer's store in Waterloo, Iowa, in the Sears Product Services Department. This department was closed on August 13, 2005 but the claimant remained until August 27, 2005 completing the closure. The employer's store, where the claimant was employed, remained open and is still open. No other departments were closed. The department was its own unit within the store. A field auditor's report indicates that the employer's business did not close at the location where the claimant was employed.

REASONING AND CONCLUSIONS OF LAW:

The question presented in this appeal is whether the claimant was laid off due to her employer going out of business and therefore the claimant is entitled to have her wage credits recomputed as a business closing and her unemployment insurance claim redetermined as a business closing. The administrative law judge concludes that the claimant was not laid off as a result of her employer going out of business and, therefore, the claimant is not entitled to a recomputation of her wage credits and a redetermination of her unemployment insurance claim.

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.

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 administrative law judge concludes that the employer, Sears Roebuck & Company, has not gone out of business at its location in Waterloo, Iowa, where the claimant was employed. The claimant credibly testified that she worked in the Sears Product Services Department in the employer's store in Waterloo, Iowa. Although the claimant's department did close, the claimant credibly testified that the store remained open and is still open and the only department closed was that of the claimant's. Accordingly, the administrative law judge is constrained to conclude that the employer did not go out of business at the premises at which the claimant was last employed. The business continued to function as a business, a retail establishment. The claimant's department was closed but this does not change the fact that the employer's business did not close but remains open at the location where the claimant worked. It may be that the claimant's department was its own unit but the employer's store and its business did not close. Accordingly, the administrative law judge concludes that the employer did not go out of business and, as a consequence, the claimant was not laid off due to the employer going out of business and the claimant is not entitled to a recomputation of her wage credits and a redetermination of her unemployment insurance claim as a business closing.

DECISION:

The representative's decision of February 22, 2006, reference 02, is affirmed. The claimant, Beverly S. Nicol, is not entitled to have her unemployment insurance claim redetermined as a business closing, including a recomputation of her wage credits, because the employer did not go out of business at the location where the claimant was employed, and the claimant's request for such redetermination and recomputation is denied.

cs/tjc