

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERRI L LEEPER**

Claimant

**APPEAL NO: 12A-UI-07468-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**

Employer

**OC: 10/16/11**

**Claimant: Appellant (2/R)**

Section 96.3-5 – Benefit Calculation Related to Business Closure

**STATEMENT OF THE CASE:**

Sherri L. Leeper (claimant) appealed a representative's June 15, 2012 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits based on a recalculation of benefits as due to a layoff caused by a business closure from Packers Sanitation Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 17, 2012. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant eligible for benefits calculated on the basis of a business closing?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 7, 2010. She most recently worked full time as a contracts and proposals handler for the employer's industrial cleaning business, which was originally based in a corporate office at 1010 E. Washington St, Mt. Pleasant, Iowa. Her last day of work was October 14, 2011. She was laid off for lack of work as of that date.

In early 2011 the employer's business merged with another industrial cleaning business, Kaiser Cleaning. The merged business subsequently announced that its corporate office in Mt. Pleasant would be closed, and its functions transferred to the Keiler, WI corporate office of what had previously been Kaiser Cleaning.

There had previously been approximately 30 full-time employees working in the Mt. Pleasant office. By December 31, 2011, all of those employees were laid off or had accepted transfers to the new Wisconsin corporate office. The premises previously occupied by the employer in Mt. Pleasant was vacated; new businesses have moved into a portion of the building, and a

portion of the building remains unoccupied. The employer's business name has been removed from the sign which is in front of the building.

While the employer's Iowa employer account remains active, this is likely because of industrial cleaning services which the merged company continues to perform at other business sites in Iowa.

#### **REASONING AND CONCLUSIONS OF LAW:**

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code §96.3-5.

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.

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.

The employer's business premises at which the claimant had been employed has closed, resulting in her loss of employment. Therefore, claimant is entitled to a recalculation of benefits.

The administrative law judge observed during the hearing that the claimant had previously exhausted her regular benefit eligibility and had begun receiving federal emergency unemployment compensation (EUC). As state unemployment funds must be exhausted before EUC benefits can be paid, there will likely need to be an adjustment to weeks for which EUC

benefits have been paid. The case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

**DECISION:**

The representative's June 15, 2012, reference 02, decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed. The matter is remanded to the Claims Section for investigation and determination of the EUC issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs