

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAURINE I LEMBKE
Claimant

AHL'S INC
Employer

APPEAL NO. 08A-UI-05725-NT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/27/08 R: 02
Claimant: Appellant (1)

Section 96.3(5) – Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a June 18, 2008, reference 03, fact-finder's decision that denied her request to have her claim redetermined as a business closing. After due notice was issued, a hearing was held by telephone on July 8, 2008. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

The issue is whether the claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was most recently employed as a part-time bookkeeper for the captioned employer through November 30, 2007 when she was laid off due to a lack of work. The accounting firm, Ahl's, Inc. was not closed but sold on December 1, 2007 to new owners who continued to operate the business at the time of hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not laid off due to a business closure.

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.

Since the evidence establishes that the business was sold to new owners and that the successor employer continues to operate the business, the business is not considered to have closed. Therefore, while the claimant was initially qualified for benefits based upon a layoff from this employer, Ms. Lembke is not entitled to a recalculation of benefits.

DECISION:

The June 18, 2008, reference 03, decision is affirmed. The claimant's request for a recalculation of benefits based upon a business closure is denied.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs