

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISE L PEDERSEN

Claimant

APPEAL NO. 08A-UI-03370-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELSON, DEBORA

FRESH HAIR STUDIO & DAY SPA

Employer

**OC: 02/03/08 R: 01
Claimant: Appellant (1)**

Section 96.3(5) – Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

Lise Pedersen filed a timely appeal from the April 3, 2008, reference 01, decision that concluded Ms. Pedersen's claim for benefits was not based on a layoff that was pursuant to a business closing. After due notice was issued, a hearing was held on April 21, 2008. Ms. Pedersen participated. The hearing in this matter was consolidated with the hearing concerning claimant Carolyn Small in Appeal Number 08A-UI-03371-JTT. Ms. Small participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Department Exhibit D-1, Form 60-0240, was received into evidence.

ISSUE:

Whether the claimant was laid off pursuant to a business closing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lise Pedersen was employed by Debora Nelson, doing business as Fresh Hair Studio & Day Spa, as a cosmetologist until February 1, 2008. On February 1, Ms. Nelson notified Ms. Pedersen that Ms. Nelson had sold her business and that Ms. Nelson could no longer employ Ms. Pedersen. The salon where Ms. Pedersen had worked was located at 4501 Southern Hills Drive in Sioux City. Ms. Nelson sold her business to Pat Luse. Pat Luse continues to operate a salon at the same physical location, though plans may be underway to relocate the business in the near future.

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 weight of evidence establishes that Ms. Pedersen was not laid off as the result of a business closing as defined by the Workforce Development rule. The business was sold to a new owner on February 1, 2008, and the new owner continues to operate a salon at the same location.

Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Ms. Pedersen's unemployment insurance benefits should not be determined as being based on a business closing.

DECISION:

The Agency representative's decision dated April 3, 2008, reference 01, is affirmed. The claimant was not laid off due to a business closing and her benefits should be determined accordingly. The claimant continues to be eligible for benefits, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw