

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LILA M REITER
Claimant

APPEAL NO: 13A-UI-04451-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWEST DIRECT OF IOWA INC
Employer

OC: 03/10/13
Claimant: Appellant (1)

Section 96.3-5 – Business Closing
871 IAC 24.29(2) – Definition of Closing

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 8, 2013, reference 01, that denied her request for business closing benefits effective March 10, 2013. A telephone hearing was held on May 20, 2013. The claimant participated. The employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: Claimant worked as a telephone representative at a building location in Dyersville, Iowa. Claimant received a message the employer was shutting down, and she saw a “for-sale” sign on the building. It closed the building business location on March 14, and claimant was laid-off for lack of work effective her last day on March 10.

The employer offered continuing employment to other telephone representatives to conduct business with employer equipment at their home locations. The employer did not provide claimant with this continuing work opportunity.

The employer failed to respond to the hearing notice.

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 administrative law judge concludes the claimant was laid-off for lack of work but it was not due to a business permanently closed on March 14, 2013.

The test of whether there is a business closing does not rest on the physical location of the business but whether the employer continues to conduct business. Although the employer sold the building where claimant worked and she was laid-off, it continued business thru at-home employed workers that is not a business permanently closed.

DECISION:

The department decision dated April 8, 2013, reference 01, is affirmed. The claimant was laid-off on March 10, 2013 but it was not due to a business closing. Business closing benefits denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs