

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARALEE LARMON
Claimant

APPEAL NO. 09A-UI-04742-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TROVOST RESTAURANT
Employer

OC: 08/17/08
Claimant: Respondent (1)

Section 96.3-5 – Layoff Due to Business Closing

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 16, 2009, reference 05, which allowed the claimant's maximum benefit amount to be recalculated effective August 17, 2008 as a business closing. After due notice was issued, a telephone conference hearing was scheduled for and held on April 22, 2009. The claimant participated personally. The employer participated by Mr. Jeff Camp,, Company Owner/President.

ISSUE:

The issue in this matter is whether the claimant's maximum benefit amount was properly recalculated as a business closing.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered all of the evidence in the record, finds: The claimant was employed as a part-time hostess for this employer from September 2006 until July 12, 2008 when she was discharged from employment. The claimant was separated from her employment as the employer began to wind down his business operations due to slow business conditions and the decision of the company's landlord not to renew their location lease. The employer was also dissatisfied as Ms. Larmon had agreed to replace another worker on the night of July 12 but was unable to report due to unexpected personal reasons. The claimant had contacted the company's assistant manager that evening who had reluctantly authorized Ms. Larmon's absence.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the evidence in the record establishes that the claimant's separation from employment and the benefit amount was properly recalculated on the basis of a business closing. It was.

The administrative law judge concludes based upon the totality of the evidence in the record that at the time of the claimant's discharge on December 12, 2008 the claimant's discharge was

related at least in substantial part to the employer's plans to close its business. The employer was aware at that time of declining revenues and was aware that its lease with the company's landlord was subject to renewal. The evidence in the record establishes that the restaurant closed its doors some two weeks later, permanently closing the facility and its 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.

DECISION:

The representative's decision dated March 16, 2009, reference 05, is affirmed. The claimant's maximum benefit amount was properly recalculated as a layoff due to a business closing.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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