

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLA K RICHEY
Claimant

APPEAL NO: 12A-UI-09332-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH IOWA COMMUNITY ACTION
Employer

OC: 07/01/12
Claimant: Appellant (1)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Darla K. Richey (claimant) appealed a representative's July 30, 2012 decision (reference 01) that concluded she was not qualified to have her claim recalculated as due to a business closure after a separation from employment from North Iowa Community Action (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 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. During the hearing, Claimant's Exhibit A was entered into evidence. 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 most recently worked full time as a teacher's associate in the employer's Manly, Iowa, Headstart preschool program. Her last day of work was May 24, 2012. She was laid off as of that date. The claimant established an unemployment insurance benefit year effective July 1, 2012. She is receiving regular unemployment insurance benefits under that claim, and as of the date of the hearing had a remaining balance of \$2,952.23.

The claimant was laid off from work because the employer determined that it would no longer operate the Headstart preschool program in Manly itself. Rather, the Headstart preschool program was being turned over to the local elementary school in Manly. The Headstart preschool program in Manly is continuing, but will now be operated at the elementary school facility, and will be staffed by persons employed by the school district. The employer's Headstart preschool program in Manly had employed eight staff plus a cook and a bus driver. The bus driver was being retained by the school district, and one of the eight staff members was hired on by the school district to work in the Headstart preschool program through the school

district. The claimant applied for a position through the school district, but as of the date of the hearing had not been successful in obtaining employment with the program at the school.

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.

In this case, the underlying "business," the Headstart preschool program, continues to operate, just under new management and "ownership." Therefore, while the claimant is entitled to regular unemployment benefits, she is not entitled to a recalculation of benefits as due to a business closing.

DECISION:

The representative's July 30, 2012 (reference 01) decision is affirmed. The claimant was not laid off due to a business closure under the meaning of the law. Recalculation of benefits is denied.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw