IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

STEPHANIE I TREECE
Claimant

CENTER VILLAGE INC
Employer

APPEAL NO. 13A-UI-01527-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/30/12
Claimant: Appellant (1)

Iowa Code § 96.3(5) – Layoff/Business Closing/Benefit Redetermination

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 31, 2013, reference 02, decision that denied the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on March 7, 2013. Claimant participated. Employer did not participate.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was separated from the employment on December 31, 2012 when the business was sold to a new owner who continues to operate in the same location as the previous owner. The claimant was not hired to work for the new owner.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not laid off as a result of the employer going out of business and, therefore, is not entitled to a redetermination of wage credits.

Iowa Code § 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) and (2) provide:

> 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.
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> (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 that the employer did not go out of business in its Keosauqua, Iowa location. The evidence establishes that the employer's premises in Keosauqua was sold or transferred or that a successor employer will continue to operate the business. Accordingly, the administrative law judge concludes that the employer did not go out of business effective December 31, 2012 and, as a consequence, the claimant is not entitled to a redetermination of her wage credits as of that date. Since there is still an ongoing business at that location, the business is not considered to have closed. Therefore, while claimant remains qualified for benefits based upon a layoff from this employer, she is not entitled to a recalculation of benefits.

DECISION:

The January 31, 2013, reference 02, decision is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

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