

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAYLOR T SENEAPHAY
Claimant

APPEAL NO. 15R-UI-05313-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 04/06/14
Claimant: Appellant (1)

Iowa Code § 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation of Wage Credits)

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 26, 2015, reference 06, which held claimant ineligible for business closing benefits pursuant to Iowa Code § 96.3-5 insurance benefits. After due notice, a hearing was scheduled for and held on June 9, 2015. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue presented in this appeal is whether the claimant was laid off due to the employer going out of business and, therefore, is entitled to have the wage credits re-computed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As claimant was the only participant in this hearing, all findings of fact are gleaned from claimant's testimony. Claimant was laid off by employer on April 10, 2015 because employer was closing the HARP portion of its home mortgage division and moving it to Colorado. All people employed in this division were permanently laid off. Employer still has an ongoing business operation in the same location.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.3(5)a provides:

a. 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.

Iowa Admin. Code r. 871-24.29(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, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. 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.

The claimant's testimony establishes that the employer did not close its doors at the premises in West Des Moines, Iowa in April, 2014. 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, he is not entitled to a recalculation of benefits. If the entire business closes and ceases all operation at that location during the benefit year, claimant may reapply for recalculation.

DECISION:

The decision of the representative dated February 26, 2015, reference 06 is affirmed. The claimant, is not entitled to have the unemployment insurance claim re-determined as a business closing, and is not entitled to a re-computation of wage credits. The claimant's request for such re-determination and re-computation is denied.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs