

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA S MASON

Claimant

APPEAL NO: 13A-UI-01438-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTER VILLAGE INC

Employer

OC: 12/30/12

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 January 31, 2013, reference 01, that denied her request for business closing benefits effective December 30, 2012. A telephone hearing was held on March 5, 2013. The claimant participated. The employer did not participate. Claimant Exhibits A and B was received as evidence.

ISSUE:

Whether claimant was laid off due to a business closing.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record finds: The claimant last worked at the employer facility as a full-time employee on December 31. The employer sold the business to Tenco Industries effective January 1, 2013 who continued to operate it after the sale. Claimant made an employment application to Tenco but was not offered employment. After the business sale, the employer dissolved the corporation and ceased doing any business.

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 due to a business sale that is not a business permanently closed effective December 31, 2012.

Although the employer dissolved its corporation and ceased doing business, the facility it owned where claimant last worked was sold to a new employer that continued the operation. The business facility continued although the employer ceased doing business that is not considered a permanent business closing. The failure of the new employer (Tenco) to offer claimant employment is considered as a layoff for lack of work, but it is not due to a business closing because it continued to operate under new ownership.

A layoff due to a business sale is not considered a business closing and benefits are denied.

DECISION:

The department decision dated January 31, 2013, reference 01, is affirmed. The claimant was laid-off but it was not due to a business closing. Business closing benefits are denied.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css