

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY L KELLY

Claimant

APPEAL NO. 08A-UI-05729-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ASR INTERNATIONAL CORP
ASR MANAGEMENT & TECHNICAL
SERVICES**

Employer

**OC: 03/30/08 R: 02
Claimant: Appellant (1)**

Section 96.3(5) – Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

Jeremy Kelly filed a timely appeal from the June 18, 2008, reference 01, decision that determined his layoff had not been based on a business closing. After due notice was issued, a hearing was held on July 8, 2008. Mr. Kelly participated. Mike Quaglino, Human Resources Manager, represented the employer. Department Exhibit D-1, Form 60-0240, was received into evidence. The record was left open for the limited purpose of giving Mr. Kelly the opportunity to submit as Exhibit A the letter the employer sent to him in February 2008 to notify him of the pending layoff. At the time of the July 8 hearing, Mr. Kelly indicated he would submit the exhibit on July 8. Mr. Kelly has not submitted the Exhibit as of the July 10, 2008 entry of this decision.

ISSUE:

Whether the claimant was laid off pursuant to a business closing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jeremy Kelly was employed by ASR Management & Technical Services as a full-time Quality Clerk from October 3, 2005 until March 28, 2008, when he was laid off. The employer has contracted with the United States Postal Service to monitor another contractor's performance. Mr. Kelly performed his work at the Dyncorp facility at 4200-4298 N.W. Urbandale Drive in Urbandale. Mr. Kelly's employment ended because the United States Postal Service did not renew its contract with ASR Management & Technical Services. Dyncorp continues to operate at the Urbandale address where Mr. Kelly worked. The United States Postal Service took over quality monitoring of Dyncorp's performance once the contract with ASR Management & Technical Services expired. ASR Management & Technical Services had no other contracts in the State of Iowa.

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 weight of the evidence indicates that Mr. Kelly was not laid off pursuant to a business closing as defined by the Administrative Code rule. The facility where Mr. Kelly establishment and/or premises where Mr. Kelly performed his work has not closed. The United States Postal Service continues to perform similar quality monitoring of Dyncorp at the facility where Mr. Kelly worked.

Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Mr. Kelly's unemployment insurance benefits should not be determined as being based on layoff pursuant to a business closing.

DECISION:

The Agency representative's decision dated June 18, 2008, reference 01, is affirmed. The claimant was not laid off due to a business closing and his benefits shall not be redetermined.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs