

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WENONA J MCGEE**  
Claimant

**APPEAL NO. 14A-UI-03808-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**  
Employer

**OC: 01/12/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Wenona McGee filed a timely appeal from the April 1, 2014, reference 03, decision that denied her request to have her claim for benefits redetermined as being based on layoff due to a business closing. After due notice was issued, a hearing was held on April 29, 2014. Ms. McGee participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

**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: Wenona McGee was employed by Kinseth Hotel Corporation as the manager of the Super 8 Motel located at 105 East Oskaloosa Street in Pella until May 22, 2013, when she was laid off in connection with the employer sale of the motel to another business. The new business owner continued to operate a motel from the same location, but did not retain Ms. McGee's services.

**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 evidence establishes that Ms. McGee was laid off, but not laid off in connection with a business closing. The layoff occurred in the context of a sale of the property where Ms. McGee worked to another business that continued to operate the business from the same location. Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Ms. McGee's claim for unemployment insurance benefits should not be redetermined as being based on a business closing.

**DECISION:**

The claims deputy's decision dated April 1, 2014, reference 03, is affirmed. The claimant was not laid off due to a business closing and her claim for unemployment insurance benefits should not be redetermined as being based on a business closing. The request to redetermine benefit eligibility is denied.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css