

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WHITNEY L GIBBS

Claimant

APPEAL NO. 12A-UI-06824-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE POWELL LAW FIRM PC

Employer

OC: 10/09/11

Claimant: Appellant (1)

Section 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 June 1, 2012, reference 03, which held claimant ineligible for business closing benefits pursuant to Iowa Code Section 96.3-5 insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 13, 2012. Claimant participated personally with witness Katherine Daman, Attorney at Law. Employer participated by Rodney Powell, President.

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: Claimant was laid off by employer on October 28, 2011 because the employer lost his license to practice. Employer practiced law at the location 3737 Woodland Avenue, Suite 601, West Des Moines Iowa. Employer suffered a license suspension October 2011. Employer laid off all employees while suspended. Employer continued to occupy the office at 3737 Woodland Avenue during the suspension without practicing law. Employer's license was reinstated May 18, 2012. Employer again conducts the active practice of law at the same location on Woodland Avenue.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the claimant was not laid off as a result of the employer going out of business and, therefore, is not entitled to a re-computation of wage credits. The business was not permanently closed. The license suspension was temporary. Employer is now conducting business at the same location as prior to claimant's layoff. Claimant has failed to prove a layoff due to a business permanently closed.

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.

DECISION:

The decision of the representative dated June 1, 2012, reference 03, is affirmed. The claimant is not entitled to have the unemployment insurance claim re-determined as a business closing. The claimant's request for such re-determination and re-computation is denied.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs