

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACI M LILLARD
Claimant

APPEAL NO. 08A-UI-04456-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS DIRECT TELEMARKETING INC
Employer

**OC: 10/14/07 R: 02
Claimant: Appellant (1)**

Section 96.3-5 – Business Closures

STATEMENT OF THE CASE:

Staci M. Lillard filed a timely appeal from an unemployment insurance decision dated May 6, 2008, reference 04, that denied her request to re-determine her unemployment insurance benefits using the business closure provisions of the law. Due notice was issued for a telephone hearing to be held May 22, 2008. Ms. Lillard did not respond to the notice. Prior to the hearing, the employer, Access Direct Telemarketing, Inc., indicated that it did not wish to participate. In reaching this decision, the administrative law judge considers Agency benefit payment records and decision records.

ISSUE:

Did the claimant become unemployment as the result of her last employer going out of business at the location at which the claimant worked?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Staci M. Lillard's employment with Access Direct Telemarketing, Inc., ended with her discharge on October 19, 2007. Since the discharge was not the result of misconduct, Ms. Lillard was awarded unemployment insurance benefits. Access Direct Telemarketing, Inc., ceased operations at the location where Ms. Lillard had worked on April 20, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant is entitled to having her benefits re-determined using the business closure provisions of the law, Iowa Code section 96.3-5. For the reasons which follow, the administrative law judge concludes that she is not.

Iowa Code section 96.3-5 allows re-determination of an individual's benefits if, and only if, the individual has become unemployed as a result of the employer ceasing operations at the location where the claimant last worked. The evidence in this record persuades the administrative law judge that Ms. Lillard's employment ended approximately six months prior to

the employer closing at that location. Furthermore, it appears that the discharge was for a performance issue rather than from downsizing in anticipation of the closure. Under these circumstances, re-determination of the claim is not appropriate. Of course, the claimant may receive benefits as initially determined when she filed her claim in October 2007.

DECISION:

The unemployment insurance decision dated May 6, 2008, reference 04, is affirmed. While the claimant is entitled to receive unemployment insurance benefits as initially determined, she is not entitled to re-determination of her benefits pursuant to the business closure provisions of the statute.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw