

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN L COLEMAN
Claimant

APPEAL NO. 12A-UI-13574-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GP DISTRIBUTING INC
SHOPPERS SUPPLY**
Employer

OC: 09/30/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Kathleen Coleman filed a timely appeal from the November 8, 2012, reference 01, decision that denied her request to have her unemployment insurance claim redetermined based on an agency conclusion that her layoff was not based on a business closing. After due notice was issued, a hearing was held on December 12, 2012. The hearing in this matter was consolidated with the hearing in Appeal Numbers 12A-UI-13583-JTT, concerning claimant Marilyn Gronewold, and 12A-UI-13604-JTT, concerning claimant Lori Holder. All three claimants participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether the claimant's layoff was pursuant to a business closing as defined by the applicable law.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kathleen Coleman was employed by GP Distributing, doing business as Shoppers Supply, as a full-time warehouse distribution employee until September 30, 2012, when she was laid off in connection with GP Distribution's sale of its Iowa based Shoppers Supply stores to Bomgaars of Sioux City, Iowa. Ms. Coleman worked at a facility located at 3112 – 5th Avenue South in Fort Dodge. That facility housed a retail store, a warehouse distribution center, and a corporate office suite. Bomgaar's continues to operate the retail store at the 5th Avenue South location. However, Bomgaar's runs its warehouse distribution from a different location. Bomgaars' corporate office suite is also located at a different location.

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.

This case is not about whether Ms. Coleman was laid off from her employment with GP Distributing, doing business as Shoppers Supply. That issue has already been adjudicated in favor of Ms. Coleman in the absence of protest from GP Distributing. Rather, the case at hand is about the narrower issue of whether Ms. Coleman's unemployment is based on a business closing, as defined by the applicable law, such that she would be eligible for an increased amount of benefits over a greater period than the standard 26 weeks. Iowa Administrative Code rule 871 IAC 24.29(2) states that "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 successor employer, Bomgaars, continues to operate at the Fort Dodge store facility it purchased from GP Distributing, the same facility where Ms. Coleman worked.

When the Iowa Legislature enacted Iowa Code section 96.5(5) pertaining to layoffs based on business closings, it could have included a requirement that the successor employer must continue to operate at the business location in the exact same manner as the predecessor. However, the legislature did not create any such requirement. Likewise, when Workforce Development, under the authority of the Iowa Legislature, enacted Iowa Administrative Code

rule 871 IAC. 24.29(2) to specifically define what constituted a business closing, it could have included a requirement that the successor employer must continue to operate at the business location in the exact same manner as the predecessor. However, the agency did not create any such requirement. Instead, the administrative rule states that there is no business closing where the successor employer continues to operate the business at the same location where the claimant was employed. Under the definition contained in the administrative rule, the administrative law judge must conclude that Ms. Coleman's layoff was not pursuant to a business closing. Ms. Coleman's request to have her claim redetermined as being based on a business closing is denied.

DECISION:

The Agency representative's decision dated November 8, 2012, reference 01, is affirmed. The claimant's layoff was not pursuant to a business closing as defined by the applicable law. The claimant's request to have her claim redetermined as being based on a business closing is denied.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css