

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PATRICK T PURTLE
PO BOX 64
DERBY IA 50068**

**CHARITON RESIDENTIAL LLC
CHARITON RESIDENTIAL
1508 EVELYN ST
PERRY IA 50220**

**Appeal Number: 06A-UI-03006-JTT
OC: 10/30/05 R: 03
Claimant: Respondent (1R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Chariton Residential filed a timely appeal from the March 10, 2006, reference 04, decision that allowed benefits and determined the claimant had been laid off due to a business closing. After due notice was issued, a hearing was held on April 4, 2006. Claimant Patrick Purtle participated. Owner Russ Hemness represented the employer. Department Exhibit D-1, Form 60-0240, was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Patrick Purtle was employed by Chariton Residential until November 1, 2005, when he was laid off. Mr. Purtle had worked at Auburn Manor, which was located at 815 Auburn Avenue in Chariton.

On November 1, 2005, the employer closed its establishment at that location. The employer did not sell or otherwise transfer the business to another employer.

REASONING AND CONCLUSIONS AT LAW:

The question for the administrative law judge is whether the evidence in the record establishes that Mr. Purtle was laid off due to a business closing. It does.

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 Mr. Purtle was indeed laid off as the result of a business closing. Chariton Residential did not continue to operate the business on the premises at which Mr. Purtle was employed. Nor did the employer sell or otherwise transfer the business to another employer. Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that Mr. Purtle's unemployment insurance benefits were appropriately redetermined based on a business closing.

During the hearing, the employer asserted that the claimant had accepted a position at a different facility operated by the employer and subsequently quit. That separation issue was not appropriately before the administrative law judge and the parties had not received appropriate notice that the issue would be addressed at the hearing. This matter will be

remanded to a claims representative for determination of whether there was an employment relationship and separation *subsequent* to the lay off due to the business closing on November 1, 2005.

DECISION:

The Agency representative's decision dated March 10, 2006, reference 04, is affirmed. The claimant was laid off due to a business closing and his benefits were redetermined accordingly.

REMAND:

This is remanded to a claims representative for determination of whether there was an employment relationship and separation *subsequent* to the lay off due to the business closing on November 1, 2005.

jt/kkf