

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY I SCHWARTZ
Claimant

APPEAL NO. 14A-UI-04390-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK N A
Employer

OC: 12/08/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Larry Schwartz filed a timely appeal from the April 21, 2014, reference 02, decision that denied his request to have his benefit eligibility redetermined as being based on a layoff pursuant to a business closing. After due notice was issued, a hearing was held on May 16, 2014. Mr. Schwartz 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: Larry Schwartz was employed by Wells Fargo Bank from October 2010 until October 18, 2013, when the employer laid him off. Though the employer closed the department in which Mr. Schwartz worked, the employer continued to operate from the same location.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3(5)a provides:

- a. 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.

Iowa Admin. Code r. 871-24.29(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. Schwartz was laid off, but that the layoff was not the result of a business closing within the meaning of the law because the employer continued to operate its business on the premises at which Mr. Schwartz was employed. Mr. Schwartz's benefit eligibility shall not be redetermined as being based on a layoff pursuant to a business closing. The request to redetermine benefit eligibility is denied.

DECISION:

The claims deputy's April 21, 2014, reference 02, decision is affirmed. The claimant's layoff was not laid due to a business closing and the claimant's benefit eligibility shall not be redetermined as being based on a business closing. The request to redetermine benefit eligibility is denied.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css