

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN A TAYLOR
Claimant

APPEAL NO. 17A-UI-00518-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMG MIDWEST INC
Employer

OC: 05/22/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Stephen Taylor filed a timely appeal from the January 4, 2017, reference 05, 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 February 6, 2017. Mr. Taylor participated. Courtney Maxwell, Human Resources Generalist, represented the employer.

ISSUE:

Whether Mr. Taylor 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: Stephen Taylor was employed by OMG Midwest, Inc., d/b/a American Concrete, as a full-time ready mix driver from August 8, 2016 and last performed work for the employer on December 10, 2016. Mr. Taylor performed his work duties from the American Concrete facility located at 265 South 13th Street in West Des Moines. Mr. Taylor's work for the employer ended because the employer sold the American Concrete facility to another company Rasmussen Group. The sale was effective December 14, 2016. Mr. Taylor's supervisor at American Concrete gave Mr. Taylor advance notice that he would be laid off effective the sale date. Mr. Taylor ended up having to shorten his employment by a couple days to address a family member's medical condition. Prior to the layoff, Mr. Taylor received notice from his supervisor at American Concrete that the new owner intended to revamp and reopen the facility at the same location. The supervisor told Mr. Taylor that the supervisor had been hired to run the location on behalf of Rasmussen Group and that the supervisor hoped to have all of the drivers, including Mr. Taylor, continue to work at the facility. The location is closed temporarily as the new owner upgrades the facility. The location has not permanently closed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 in the record establishes that Mr. Taylor was laid in connection with the employer's sale of the West Des Moines location to a new employer entity. Mr. Taylor's layoff did not occur in the context of a business closing as that term is defined in the unemployment insurance law. Though the new owner has temporarily ceased operations, the expectation is that the new owner will be operating from the same location in the near future. Mr. Taylor is not eligible to have his benefit eligibility redetermined as being based on a business closing. The request to redetermine eligibility is denied.

DECISION:

The January 4, 2017, reference 05, decision is affirmed. The claimant was not laid off *pursuant to a business closing* within the meaning of the law. The claimant is not eligible to have his benefit eligibility redetermined as being based on a business closing. The request to redetermine eligibility is denied.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs