

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODNEY D JONES**  
Claimant

**APPEAL NO. 08A-UI-02244-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TIPTON SAWMILL & MILLWORKS**  
Employer

**OC: 10/28/07 R: 03  
Claimant: Respondent (2)**

Section 96.3(5) – Layoff Due to Business Closing

**STATEMENT OF THE CASE:**

Tipton Sawmill & Millworks (employer) appealed a representative's March 30, 2008 decision (reference 02) that determined that Rodney Jones' (claimant) request to have his unemployment insurance claim redetermined as a business closing was allowed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 11, 2008. The claimant participated personally. The employer participated by Stan Kittleson, Owner; Ryan Nesham, Stepson and Former Employee; and Charles Frymoyer, Prospective Buyer.

**ISSUE:**

The issue is whether the claim can be redetermined based upon a business closing.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 22, 2006, as a full-time manager and sawyer. On or about August 27, 2007, the employer had a meeting with the claimant, his wife and his stepson. The employer told his employees that he was out of money and resources. He was going to lay off the claimant's wife and his stepson. The last day would be August 31, 2007, and the employer was going to try to sell the business. He looked at the claimant, put his hands in the air and said he did not know what to do. The claimant was upset because he and his wife moved to the area to work at the saw mill. They were living in a place owned by the employer on the property.

On or about August 31, 2007, the employer met with the claimant and his wife about changing the due date for rent from the fifteenth of the month to the first of the month. The claimant got up and left at the beginning of the conversation. The wife and employer continued the meeting. August 31, 2007 was the claimant and his wife's last day of work.

The employer continues to sell firewood and lumber from the property.

The claimant's and the employer's testimony is contradictory. The administrative law judge finds the claimant's testimony to be more credible because the employer's testimony was internally inconsistent. Mr. Kittleson stated the claimant and he were alone and the claimant resigned. Later Mr. Kittleson said the claimant's wife was in the room right before the claimant resigned and walked out.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not laid off due to a business closure.

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(1) provides:

Business closing.

(1) Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

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.

Since there is still an ongoing business at that location, the business is not considered to have closed. Therefore, while claimant remains qualified for benefits based upon a layoff from this employer, he is not entitled to a recalculation of benefits.

**DECISION:**

The representative's March 30, 2008 decision (reference 02) is reversed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css