

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLTON T WOLVERTON
Claimant

APPEAL NO. 12A-UI-08976-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUNAT PAYROLL INC
Employer

OC: 01/22/12
Claimant: Appellant (1)

Section 96.3(5) – Business Closing

STATEMENT OF THE CASE:

The claimant, Charlton Wolverton, filed an appeal from a decision dated July 10, 2012, reference 02. The decision denied the claimant's request for a redetermination of benefits based on a business closing. After due notice was issued a hearing was held by telephone conference call on August 20, 2012. The claimant participated on his own behalf. The employer participated by Director of Human Resources Annette Benkusky and Human Resources Manager Chris Stricker.

ISSUE:

The issue is whether the claimant's request to have his claim redetermined as a business closing may be granted.

FINDINGS OF FACT:

Charlton Wolverton was employed by Cunat Payroll from May 6, 2010 until January 25, 2012 as a full-time maintenance coordinator. He worked at 2200 Buckingham Drive NW, Cedar Rapids, Iowa.

The employer sold the property to Steadfast Companies effective January 26, 2012. Mr. Wolverton was not offered a job with the new company because he did not have a valid driver's license. This was required in his job description. The policies stated he was to inform the company if he lost his license but he failed to notify Cunat Payroll when his license was suspended in 2011. He still does not have a valid license. Steadfast Companies continues to operate the apartment building.

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(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.

The claimant was not laid off due to a business closing. The property was sold and the claimant not eligible for the job because he failed to inform the employer he did not have a valid license and had continued to work for the previous owner with no valid license.

DECISION:

The representative's decision of July 10, 2012, reference 02, is affirmed. The claimant is not eligible for a redetermination of his claim as the business did not close.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs