

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REKHA K DAVER-SHANKAR
Claimant

APPEAL NO: 13A-UI-08861-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GMAC MORTGAGE LLC
Employer

OC: 05/05/13
Claimant: Appellant (1)

Section 96.3-5 – Business Closing
871 IAC 24.29(2) – Definition of Closing

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 29, 2013, reference 02, that denied his request for business closing benefits effective May 5, 2013. A telephone hearing was held on September 5, 2013. The claimant and the employer did not participate.

ISSUE:

Whether the claimant was laid off due to a business closing.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was laid-off for lack of work on April 19, 2013. The department representative who investigated this matter denied business closing benefits because of a bankruptcy re-organization and change of ownership.

The claimant was not available at the phone number provided when called for the hearing. The employer failed to respond to the hearing notice.

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(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 administrative law judge concludes the claimant was laid off for lack of work but it was not due to a business permanently closed on May 5, 2013.

The best evidence is the department investigation information this was not a business permanently closed. If for any reason claimant learns the business has permanently closed she can raise this issue with the department at a future date.

DECISION:

The department decision dated July 29, 2013, reference 02, is affirmed. The claimant was laid off but it was not due to a business closing.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css