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

SUSAN E BELLIS
Claimant

APPEAL NO. 12A-UI-06183-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KECK ENERGY
KECK INC
Employer

OC: 12/25/11
Claimant: Appellant (2)

Section 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation
of Wage Credits)

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 23, 2012, reference 02, which held claimant ineligible for business closing benefits pursuant to Iowa Code section 96.3-5 insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 20, 2012. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue presented in this appeal is whether the claimant was laid off due to the employer going out of business and, therefore, is entitled to have the wage credits re-computed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off by employer on December 30, 2012 because the business was sold to a new owner at 11408 Forest Avenue, Clive, Iowa. The Gas station was then reopened and operated as a Gas station. The Made Rite store closed December 30, 2011 and was not reopened. Claimant worked for the Made Rite store.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the claimant was laid off as a result of the employer going out of business and, therefore, is entitled to a re-computation of wage credits. The restaurant that claimant worked for was not reopened and continues as an out of business entity. This is a business permanently closed. Benefits allowed.

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.

DECISION:

The decision of the representative dated May 23, 2012, reference 02 is reversed. The claimant is entitled to have the unemployment insurance claim re-determined as a business closing, including a re-computation of wage credits. The claimant's request for such re-determination and re-computation is granted.

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Marlon Mormann
Administrative Law Judge

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Decision Dated and Mailed

mdm/css