

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYANN OSTWALD

Claimant

APPEAL NO: 13A-UI-01108-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRADLEY BERNHARDT HOWE ATTORNEY

Employer

OC: 02/26/12

Claimant: Appellant (2)

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 January 25, 2013, reference 03 ,that denied her request for business closing benefits effective February 26, 2012. A telephone hearing was held on February 28, 2013. The claimant participated. 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 stipulation of the parties finds: The claimant was laid off for lack of work on February 26, 2012. The sole practitioner and owner of the law practice, Attorney Bradley Howe passed away unexpectedly on February 11. Claimant was his only employee. Although claimant facilitated the closing of the law practice, it ceased doing business. The employer did not 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 claimant was laid off for lack of work due to a business permanently closed effective February 26, 2012.

Claimant was the only employee of a sole attorney owned and run law practice that closed due to the passing of that attorney on February 11, 2012. Although claimant facilitated the close of the practice, she lost her employment as a direct result of it. A subsequent sale had no effect on this issue as the practice was closed long before it occurred.

DECISION:

The department decision dated January 25, 2013 reference 03 is reversed. The claimant was laid off on February 26, 2012 due to a business closing. Business closing benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css