

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**LAURA C DUNN**  
Claimant

**APPEAL 18A-UI-02329-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**61 CHOP HOUSE GRILLE INC**  
Employer

**OC: 01/28/18**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.3(5) – Benefit Duration - Business Closing  
Iowa Admin. Code r. 871-24.29(1) and (2) – Business Closing

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 14, 2018, (reference 02) unemployment insurance decision that denied the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on March 16, 2018. Claimant participated. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate.

**ISSUE:**

Is the claimant eligible to have the monetary determination recalculated due to business closing?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was separated from the employment on January 28, 2018, when the business was evicted and closed. The restaurant space remains vacant without ongoing business activity.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that the claimant was laid off as a result of a business closure at the location where she worked and, therefore, is entitled to a redetermination of wage credits.

Iowa Code section 96.3(5)a provides:

**96.3 Payment — determination — duration — child support intercept.**

*5. a. 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. (Emphasis added.)

Iowa Admin. Code r. 871-24.29(1) provides:

**871—24.29(96) Business closing.**

**24.29(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, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. 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. (Emphasis added.)

Iowa Admin. Code r. 871-24.29(2) provides:

**871—24.29(96) Business closing.**

**24.29(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.* (Emphasis added.)

The claimant's testimony establishes that the employer did cease doing business on January 28, 2018, and there is no evidence that the employer's premises where claimant worked was sold or transferred or that a successor employer will continue to operate the business. Accordingly, the administrative law judge concludes that the employer went out of business effective January 28, 2018, and, as a consequence, the claimant is entitled to a redetermination of benefits as of that date.

**DECISION:**

The February 14, 2018, (reference 02) unemployment insurance decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/rvs