

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANNE M MOUNT
Claimant

APPEAL NO: 09A-UI-06637-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES
Employer

OC: 02/08/09
Claimant: Respondent (1)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Fareway Stores, Inc. (employer)) appealed a representative's April 24, 2009 decision (reference 04) that concluded Dianne M. Mount (claimant) was qualified to receive an unemployment insurance benefit recalculation because of a layoff due to a business closure. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2009. This appeal was consolidated for hearing with one related appeal, 09A-UI-06636-DT. The claimant participated in the hearing. Garrett Piklap appeared on the employer's behalf and presented testimony from one other witness, Reynolds Cramer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible for benefits calculated on the basis of a business closing?

FINDINGS OF FACT:

The claimant started working for the employer on February 19, 2007. She worked part time (approximately 25 hours per week, ranging between 18 and 32 hours per week) as a cashier at the employer's Sioux City, Pierce Street store. Her last day of work was February 6, 2009. The employer had determined not to renew its lease at that the older (1982) Pierce Street location after construction of about three new stores in the general metropolitan area in 2001 and 2002. On December 30, 2008 the employer informed the employees, including the claimant, of its decision to close its Pierce Street store, and gave the employees an opportunity to list preferences as to store locations to which they could be transferred. Of the approximately 76 employees of the Pierce Street store, all but five chose to transfer to other of the employer's four remaining stores in the Sioux City area, the most recent of which was opened in 2002.

The claimant initially indicated some preferences as to which stores she might prefer, but in discussions on January 29 and January 30 expressed concern about the number of hours she might be given, as she did not have personal transportation and would have an expense for transportation to and from another store. The two stores the claimant had preferred were both about 3.5 miles from the Pierce Street store; the claimant lived within about a block of the Pierce

Street store. On January 30, when the employer could not make an assurance that the claimant would immediately remain at her usual 25 hour average, the claimant indicated she would choose not to accept a transfer, which would result in the ending of her employment with the employer as of the last day of store operation at the Pierce Street location. There was no further discussion between the claimant and the employer thereafter regarding the claimant returning to work at any of the employer's locations. The claimant then worked through February 6, the last day the store was open for business.

REASONING AND CONCLUSIONS OF LAW:

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code § 96.3-5.

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's employment with the employer ended because the Pierce Street premises at which the claimant had worked closed and ceased to function; it did not simply move its function, but rather its function was absorbed by other stores already in the community. Therefore, claimant is entitled to a recalculation of benefits for a business closure.

DECISION:

The representative's April 24, 2009, reference 04, decision is affirmed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css