

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KIEARRA C SALSBERY
Claimant

APPEAL NO. 19A-UI-00880-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPIRIT HOMECARE LLC
Employer

OC: 01/20/19
Claimant: Appellant (2)

Iowa Code § 96.3(5) – Layoff Due to Business Closing

STATEMENT OF THE CASE:

Kiearra Salsberry (claimant) appealed a representative's January 29, 2019, decision (reference 01) that determined her request to have her unemployment insurance claim redetermined as a business closing was denied. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 14, 2019. The claimant participated personally. Spirit Homecare (employer) did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUE:

The issue is whether claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 16, 2018, as a full-time care giver. On January 23, 2019, the employer laid the claimant off for lack of work along with numerous other employees. The employer closed its business operation in Urbandale, Iowa, because the business went bankrupt.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a business closure.

Iowa Code § 96.3(5)a provides:

- 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.

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

Business closing.

(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.

Iowa Admin. Code r. 871-24.29(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 employer went out of business at the claimant's location. The premises has not been transferred to an ongoing business. The claimant was laid off due to a business closure and is entitled to a recalculation of benefits.

DECISION:

The representative's January 29, 2019, decision (reference 01) is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs