

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CASSANDRA D JAMES**  
Claimant

**MOSAIC**  
Employer

**APPEAL 17A-UI-07082-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/08/17**  
**Claimant: RESPONDENT (1)**

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Iowa Code Section 96.3-5 – Duration of Benefits (Employer Going Out of Business/Recomputation of Wage Credits)

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 9, 2017, 2016, (reference 02) unemployment insurance decision that allowed recalculation of the claimant's benefits due to a business closure. The parties were properly notified about the hearing. A telephone hearing was held on August 1, 2017. Claimant participated. Employer participated through Shanda Hiatt, Human Resources Manager; Vicki Hernandez, Human Resources Generalist and was represented by Alyce Smolskey of Equifax.

**ISSUE:**

Can the claimant's claim for benefits redetermined based upon a layoff due to a 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 December 31, 2016, when the Venburry apartment location in Altoona, where she had been working, was closed. The claimant had always worked night shifts. She was not guaranteed any other job, but was required to apply for an open position. None of the positions that were open that the claimant could have tried to apply for were night shift positions. As she was required to apply for any other open positions or jobs; no actual offer of a job or position was ever actually made to her. No business is currently operating at the Venburry location where the claimant worked as it is a private apartment.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that the claimant was laid off as a result of the employer going out of business and, therefore, is entitled to a redetermination of wage credits.

Iowa Code § 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(1) and (2) provide:

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. 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.

(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 that the employer did go out of business in its Venburry, house Iowa location. There is no evidence that the employer's premises on Venburry was sold or transferred or that a successor employer will continue to operate the business. There is no ongoing business at the Venburry location. Accordingly, the administrative law judge concludes that the employer went out of business effective December 31, 2016 and, as a consequence, the claimant is entitled to a redetermination of her wage credits as of that date.

**DECISION:**

The February 9, 2017, (reference 02), decision is affirmed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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