

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH A CRISMAN
Claimant

APPEAL NO. 15A-UI-08736-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUY RITE FOODS INC
Employer

OC: 06/07/15
Claimant: Appellant (1)

Iowa Code § 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation of Wage Credits)

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 29, 2015, reference 01, which held claimant ineligible for business closing benefits pursuant to Iowa Code § 96.3-5 insurance benefits. After due notice, a hearing was scheduled for and held on August 25, 2015. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue presented in this appeal is whether the claimant was laid off due to the employer going out of business and, therefore, is entitled to have the wage credits re-computed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off by employer on April 17, 2015 because the business had been sold. The buyer of multiple grocery stores chose not to continue a grocery store out of the place where claimant worked. The grocery store where claimant worked was sold to another third party grocery.

Claimant was unable to work from April 17, 2015 through June 6, 2015. On June 7, 2015 claimant became able and available for work. While claimant was convalescing after her surgery she was asked if she wished to come and interview for a job with the new grocery in claimant's area. Claimant declined this interview as she was not released by her doctor yet. The new store had no new openings after the first round of interviews that claimant missed.

REASONING AND CONCLUSIONS OF LAW:

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(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 holds that the claimant was not laid off as a result of the employer going out of business and, therefore, is not entitled to a re-computation of wage credits. As employer sold the business to a third party, Iowa Code § 96.3-5 and associated laws do not determine this type of business sale to allow for recomputed benefits based on going out of business.

DECISION:

The decision of the representative dated July 29, 2015, reference 01 is affirmed. The claimant, is not entitled to have the unemployment insurance claim re-determined as a business closing, including a re-computation of wage credits. The claimant's request for such re-determination and re-computation is denied.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css