

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN M SARGENT
Claimant

APPEAL NO. 12A-UI-03977-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETT & BEER CONST CO INC
Employer

**OC: 12/04/11
Claimant: Appellant (2)**

Section 96.3-5 – Business Closing
871 IAC 24.29(1) – Business Closing

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 6, 2012, reference 01, that concluded the claimant was ineligible for business-closing benefits. A telephone hearing was held on May 2, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. John Martin participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant eligible for business-closing benefits in addition to regular unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a secretary for the employer to December 31, 2012. On December 5, 2011, the employer closed its construction business located at 309 Audubon, Adair, Iowa, and the claimant was laid off. All employees were laid off, there was no further construction work was done. The activities of the owner, John Martin, since December 5, 2011, have all related to closing the business. The business' equipment and the tools have been sold at auction. The building was not open to the public for business from December 2011 through March 2012.

In March 2012, Martin allowed a concrete business, Caliber Concrete, to operate from 309 Audubon, Adair, Iowa, but the sale of the building has not closed yet. The sale will include the building and some office furnishings. Caliber Concrete has established a new employer account, and there has been no successorship for unemployment insurance purposes, which would have taken place if the employer had sold the business and substantially all its assets to Caliber Concrete.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was laid off due to a business closing.

Iowa unemployment insurance law provides additional benefits for claimants laid off due to their employer going out of business at the factory, establishment, or other premises at which they were last employed. Iowa Code § 96.3-5. The unemployment insurance rules further provide business-closing benefits to be paid retroactively to a claimant who is temporarily laid off with the expectation of returning to work and is prevented from returning to work because of the employer has gone out of business during the claimant's benefit year. 871 IAC 24.29(1). Finally, the rules define going out of business as any factory, establishment, or other premises of an employer that closes its doors and ceases to function as a business. An employer is not considered to have gone out of business at the factory, establishment, or other premises if the employer sells or otherwise transfers the business to another employer and the successor employer continues to operate the business. 871 IAC 24.29(2)

The construction business operated at 309 Audubon, Adair, Iowa, effectively closed as a business on December 5, 2011, and the claimant was laid off. She is eligible for business closing benefits.

DECISION:

The unemployment insurance decision dated April 6, 2012, reference 01, is reversed. The claimant is entitled to have her claim redetermined as a layoff due to a business closing.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw