

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON D RING ET AL**  
Claimant

**APPEAL NO. 08A-UI-01731-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARKERS DISTRIBUTION INC**  
Employer

**OC: 12/02/08 R: 02  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 14, 2008, reference 01, decision that denied business closing benefits. After due notice was issued, a telephone conference hearing was held on March 13, 2008. Claimant participated with Jerod Gloden. Employer participated through Heather Vanover.

**ISSUE:**

The issue is whether the claim can be redetermined based upon 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 either as a distribution warehouse worker or truck driver on or about December 2, 2007. The employer operates primarily from the physical address at 801 – 6th St SW, LeMars, Iowa. The distribution portion of the business, also located at that physical address, was sold to Rhinehart Food Service at the end of December 2007, which does not do business at that location. Harkers still uses the warehouse for the processing portion of the business remaining. The processing facility and administrative support for processing and for the sale of the distribution business is also still in operation at that location. Employer also arranged for truck hubs for drivers in Altoona, Iowa, and 13 states. The location in Altoona was the parking lot at Bosselman’s Truck Stop.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that the claimant was not laid off as a result of the employer going out of business and, therefore, is not 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 not go out of business in its LeMars, Iowa, location or at any of the truck hubs in truck stop parking lots. Since there is still an ongoing business at those locations, the business is not considered to have closed. Therefore, while claimant remains qualified for benefits based upon a layoff from this employer, claimant is not entitled to a recalculation of benefits.

**DECISION:**

The February 14, 2008, reference 01, decision is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw