

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY L ROBERTS**  
Claimant

**APPEAL NO: 17A-UI-11161-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LOWRY EQUIPMENT INC**  
Employer

**OC: 08/27/17**  
**Claimant: Respondent (1)**

Iowa Code § 96.3-5-Duration of Benefits (Employable Notation/Recomputation of Wage Credits)

**STATEMENT OF THE CASE:**

The employer, Lowry Equipment Inc., filed a timely appeal from an unemployment insurance decision dated October 26, 2017, reference 01, which held the claimant eligible to have his unemployment insurance claim re-determined as a business closing. After due notice was issued, a telephone conference hearing was held on November 17, 2017. Claimant participated personally. The employer participated by Mr. Brandon Lowry, Company President. The administrative law judge took official notice of the Iowa Employment Security Law, the Iowa administrative code, and the administrative file.

**ISSUE:**

Whether the claimant's unemployment insurance claim was properly recalculated as a business closing.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: Jerry Roberts was employed as a full-time parts associate and delivery driver for Lowry Equipment Inc. from January 2016 until August 25, 2017 when the employer had no further work for him at its Moravia business location because the employer had closed the facility.

Because of economic circumstances, the employer made a business decision to close its facility in Moravia, Iowa. The employer consolidated its business into its Montezuma, Iowa location. There is no business activity in Lowry Equipment, Inc. or a successor company at the business location in Moravia, Iowa where Mr. Roberts was employed.

Mr. Roberts had been hired to work at the Moravia, Iowa location and worked at that location throughout his period of employment with Lowry Equipment, Inc. No further work was available to Mr. Roberts at the company's Moravia, Iowa location where he was employed and Mr. Roberts's employment ended for that reason on August 25, 2017.

The claimant was given the option of accepting employment with the company at the Montezuma, Iowa location but declined because of the distance to the employment was substantially greater.

**REASONING AND CONCLUSIONS OF LAW:**

The issue presented in this appeal is whether the claimant was laid off due to his employer going out of business at the business location where he was employed and therefore is entitled to have his wage credits recomputed. The administrative law judge concludes that the claimant was laid off as a result of the employer going out of business at the business location where Mr. Robert's was employed and therefore he is entitled to a recomputation of his wage credits.

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 administrative law judge concludes that the employer went out of business in its Moravia, Iowa location. Going out of business means in factory or establishments or other premises of the employer which closes its doors and ceases to function as the employer's business operated by the employer or a successor employer who purchases the business from the owner.

The evidence in the record establishes that the employer closed its doors in Moravia, Iowa location. There is no evidence that the employer's premises in Moravia, Iowa was sold or transferred and that the successor employer continued to operate the business at that business location.

Accordingly, the administrative law judge concludes that the employer is considered to have gone out of business at that business location and as a consequence, the claimant was laid off due to the employer going out of business and is therefore entitled to a recomputation of his wage credits.

**DECISION:**

The representative's decision dated October 26, 2017, reference 01 is affirmed. The claimant, Jerry Roberts is entitled to a recomputation of his unemployment insurance claim as a business closing.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn