

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW D BROOME
Claimant

APPEAL NO. 09A-UI-06262-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TAX PROS OF CHICAGO INC
JACKSON HEWITT TAX SERVICE
Employer

Original Claim: 01/04/09
Claimant: Appellant (1)

Section 96.3-5 – Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

Matthew Broome filed a timely appeal from the April 17, 2009, reference 02, decision that denied the claimant's request to have his unemployment insurance claim re-determined as a business closing. After due notice was issued, a telephone hearing was scheduled for and held on May 19, 2009. The claimant participated personally. Participating as a witness was the claimant's mother, Sheila Broome.

ISSUE:

The issue is whether the claimant was laid off from Tax Pros of Chicago, Inc., pursuant to a business closing.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Matthew Broome was employed by Tax Pros of Chicago, Inc., as a tax preparation worker until his assignment ended on or about January 4, 2009. Tax Pros of Chicago, Inc. continued in business. Subsequently, Sheila Broome, the claimant's mother, made preparations to begin a tax preparation business, doing business as Tax Pros of Iowa. The claimant planned to begin working for the new business enterprise; however, prior to Mr. Broome or any other employee performing services for the new company, a decision was made to close the business due to a non-compete clause that Ms. Broome had signed with a previous company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Matthew Broome was laid off due to a business closing of Tax Pros of Chicago, Inc.

Iowa Code Section 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(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 evidence establishes that Matthew Broome was not laid off as a result of a business closing of Tax Pros of Chicago, Inc. That business continued to operate after the date of the claimant's separation from employment. As the claimant did not begin performing services and received no remuneration from Tax Pros of Iowa, a company started by the claimant's mother, there was no employment relationship and therefore no basis for a claim for unemployment insurance benefits based upon employment with Tax Pros of Iowa.

Based upon the evidence in the record and the application of the law cited above, the administrative law judge concludes that Matthew Broome's unemployment insurance benefits should not be re-determined based upon a business closing.

DECISION:

The representative's decision dated April 17, 2009, reference 02, is affirmed. The claimant was not laid off due to a business closing and benefits should not be re-determined as a business closing.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw