

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT R WIEBLER
Claimant

WIEBLERS HARLEY DAVIDSON INC
Employer

APPEAL 19A-UI-00367-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/02/18
Claimant: Appellant (1)

Iowa Code § 96.3(5) – Benefit Duration - Business Closing
Iowa Admin. Code r. 871-24.29(1) and (2) – Business Closing

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 11, 2019, (reference 01) unemployment insurance decision that denied claimant's request for a redetermination due to a business closure. The parties were properly notified about the hearing. A telephone hearing was held on January 29, 2019. Claimant participated. Employer did not register and did not participate. Claimant's Exhibit A was received.

ISSUE:

Is the claimant eligible to have the monetary determination recalculated due to 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 on November 30, 2018, when he was laid off due to the business being sold to McGrath Motorcycles of Quad Cities. McGrath is currently operating a business in the same location, but did not offer claimant a position.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not laid off as a result of a business closure at the location where he worked and, therefore, is not entitled to a redetermination of wage credits.

Iowa Code section 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.

In this case, the employer is not considered to have gone out of business because the employer sold the business to another employer who continues to operate the business in the same location under a different name. Therefore, while claimant remains qualified for regular benefits based upon a layoff from this employer, he is not entitled to a recalculation of benefits based on a business closure.

DECISION:

The January 11, 2019, (reference 01) decision is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied. If the entire business closes and ceases all operation at that location at some future date, claimant may reapply for recalculation.

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Decision Dated and Mailed

cal/scn