

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMA L RUSH
Claimant

APPEAL NO: 14A-UI-10766-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/28/14

Claimant: Respondent (4)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Casey's Marketing Company (employer)) appealed a representative's October 6, 2014 decision (reference 01) that concluded Norma L. Rush (claimant) was qualified to have her eligibility for unemployment insurance benefits redetermined as due to a layoff resulting from a business closure. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-10765-DT, regarding claimant Roma Gray. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Sharon Woods appeared on the employer's behalf. During the hearing, Exhibits A-1 and A-2 were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible for benefits calculated on the basis of a business closing?

FINDINGS OF FACT:

The claimant worked part time (about 15 - 20 hours per week) as a clerk at the employer's Humeston, Iowa location, usually working Monday and Tuesday evenings. Her most recent day of work was on or about September 23, 2014. The store temporarily closed on September 28 due to extensive rebuilding of the store, so the claimant was laid off. The store is scheduled to reopen on the same site on December 18, 2014. It is anticipated that the claimant will return to work in her regular position on or about December 22.

REASONING AND CONCLUSIONS OF LAW:

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or

other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code § 96.3-5.

Rule 871 IAC 24.29(1) and (2) provides:

(1) Where a claimant is temporarily laid off with the expectation of returning to work once temporary or seasonal factors have been eliminated, but the employer then goes out of business, the claimant is eligible for business closing benefits.

(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.

Here, it is at least premature to conclude that the employer's Humeston location has "gone out of business;" at this time the claimant is only "temporarily laid off with the expectation of returning to work" once the temporary factor of the reconstruction has been eliminated. Therefore, the claimant is not currently entitled to a recalculation of benefits as due to a business closure. She remains eligible for the regular 26 weeks of unemployment insurance benefits. Should for some reason the employer's business location subsequently not reopen, the question of business closure redetermination can be reexamined under the conditions present at that time.

DECISION:

The representative's October 6, 2014 (reference 01) decision is modified in favor of the employer. The claimant was laid off, but not due to a business closure. Recalculation of benefits is not allowed. Regular benefits are allowed, if the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css