

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH A DORN
Claimant

APPEAL NO. 07A-UI-10832-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 09/23/07 R: 03
Claimant: Appellant (1)**

Section 96.3-5 – Business Closing

STATEMENT OF THE CASE:

Deborah Dorn filed an appeal from a representative's decision dated November 19, 2007, reference 05, which denied the claimant's request to have her unemployment insurance claim re-determined as a business closing effective September 23, 2007. After due notice was issued, a hearing was scheduled for and held by telephone on December 10, 2007. Ms. Dorn participated personally. Although duly notified, there was no participation by the employer.

ISSUE:

At issue in this matter is whether the claimant is entitled to have her unemployment insurance claim re-determined as a business closing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from May 2006 until September 23, 2007, when she was laid off work pending completion of a new employer facility. Ms. Dorn worked as a full-time cashier/cook and was paid by the hour.

The claimant was laid off work on September 23, 2007, when the employer temporarily closed its facility to facilitate the construction of a new building. At the time of hearing, the claimant had been recalled to work and continued to be employed by Casey's Marketing Company at the same business location.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge in this case is whether the claimant should have her claim re-determined as a business closing. She should not.

The evidence in the record establishes that the establishment where the claimant was last employed did not go out of business but instead temporarily laid off the claimant in preparation for a new building opening. At the time of hearing, the claimant had been recalled to work at the

same business location. The evidence in the record establishes that the establishment where the claimant was employed did not go out of business.

871 IAC 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. 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.

DECISION:

The representative's decision dated November 19, 2007, reference 05, is affirmed. The claimant's request to have her separation re-determined as a business closing is denied.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw