

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY J NEFF**  
Claimant

**APPEAL NO. 07A-UI-01475-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AUTOGRAPHS – ANKENY LLC**  
**AUTOGRAPHS – XTREME**  
Employer

**OC: 11-26-06 R: 02**  
**Claimant: Appellant (1)**

Iowa Code § 96.3(5) – Layoff Due to Business Closing

**STATEMENT OF THE CASE:**

An appeal was filed from an unemployment insurance decision dated February 1, 2007, reference 01 that denied the request to redetermine the claim based upon a business closure benefits. A telephone hearing was scheduled for February 26, 2007. The appellant did respond to the hearing notice instructions but was not available when the hearing was called and did not participate in the hearing. Nor did he respond to the message left by the administrative law judge. Based on the appellant's failure to participate in the hearing, the administrative file, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claim can be redetermined based upon a business closing.

**FINDINGS OF FACT:**

Having reviewed the administrative file and the claimant's appeal letter, the administrative law judge finds: Claimant was employed as a kitchen manager at Autographs which closed on November 22, 2006, and reopened by two of the original four owners within the week as Macdaddy's, which does not have a kitchen or kitchen manager.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not laid off due to a business closure.

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(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.

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.

Even accepting all of claimant's facts as set out in his appeal letter, because there is still an ongoing business at that location, even without a kitchen, the business is not considered to have closed. Therefore, while claimant remains qualified for benefits based upon a layoff from this employer, he is not entitled to a recalculation of benefits.

**DECISION:**

The February 1, 2007, reference 01, decision is affirmed. The claimant was laid off due to a business closure. Recalculation of benefits is denied.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw