

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DONALD W ALEXANDER**  
Claimant

**APPEAL 17A-UI-03913-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RED BIKE IOWA CITY LLC**  
Employer

**OC: 01/08/17  
Claimant: Respondent (2)**

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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 employer filed an appeal from the March 15, 2017, (reference 02) unemployment insurance decision that allowed benefits and redetermined the claim based upon a business closure. The parties were properly notified of the hearing. A telephone hearing was held on May 4, 2017. The claimant participated and testified. The employer participated through owner Derek Perez.

**ISSUE:**

Is the claimant eligible to have the monetary determination recalculated due to business closing?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The business where claimant worked, a restaurant, temporarily closed on December 31, 2016 for remodel. The restaurant was remodeled, renamed, and opened up again towards the end of March 2017 at the same location. This closure was always intended to be temporary in nature. The owner of the business remained the same throughout this time period and the business has retained the same tax identification number and Iowa Workforce Development employer account number.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the employer did not go out of business and has since reopened. As the business has not closed, claimant is not entitled to a redetermination of wage credits.

Iowa Code § 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.

Since the employer continues to operate the business at the premises where claimant worked, the administrative law judge concludes that the employer did not go out of business, rather it

temporarily closed for remodeling. The business reopened in late March 2017 at the same location. Since there is still an ongoing business at that location, the business is not considered to have closed and has since reopened. Therefore, claimant is not entitled to a recalculation of benefits.

**DECISION:**

The March 15, 2017, (reference 02) unemployment insurance decision is reversed. 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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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs