

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY E LIEBER
Claimant

K MART CORP
Employer

APPEAL 17A-UI-04818-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/19/17
Claimant: Appellant (2)**

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 a timely appeal from the May 4, 2017, (reference 02) decision that denied the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on May 24, 2017. Claimant participated. Employer did not participate.

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 March 20, 2017, when she was laid off after the store closed. Claimant was given notice that she would not be allowed to transfer or bump into another position anywhere in the United States. The store is completely closed, and the business was not bought out by another entity. The store location is empty and vacant.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was laid off as a result of a business closure at the location where he worked and, therefore, is entitled to a redetermination of wage credits.

Iowa Code § 96.3(5)a provides:

96.3 Payment — determination — duration — child support intercept.

5. *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. (Emphasis added.)

Iowa Admin. Code r. 871-24.29(1) provides:

871—24.29(96) Business closing.

24.29(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:

871—24.29(96) Business closing.

24.29(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.

The administrative law judge concludes that the employer did close the business in its Sioux City, Iowa location.

The claimant's testimony establishes that the employer did close its doors at the premises in Sioux City, Iowa on March 26, 2017. There is no evidence that the employer's premises where claimant worked was sold or transferred or that a successor employer will continue to operate the business. Accordingly, the administrative law judge concludes that the employer went out

of business effective March 26, 2017, and, as a consequence, the claimant is entitled to a redetermination of wage credits as of the date of filing a valid claim.

DECISION:

The May 4, 2017, (reference 02) decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn