

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES N HARRIS

Claimant

APPEAL NO: 14A-UI-06886-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GERARDA NEGRON
NEGRON MEXICAN FOODS**

Employer

OC: 04/06/14

Claimant: Respondent (3)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

An appeal was filed from the representative's June 18, 2014 decision (reference 03) that concluded James N. Harris (claimant) was not entitled to have his unemployment insurance benefits recalculated as being due to a business closure from Gerarda Negron, formerly doing business as Negron Mexican Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 7, 2014. This appeal was consolidated for hearing with four related appeals involving four other claimants, 14A-UI-07258-DT, 14A-UI-07259-DT, 14A-UI-07260-DT, and 14A-UI-07261-DT. 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 he could be reached for the hearing and did not participate in the hearing. Eva Sadat appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 recalculated on the basis of a business closing?

FINDINGS OF FACT:

The employer operated as a restaurant serving food, hosted by a bar which actually owned and operated the building premises. The employer operated within the bar on Wednesdays through Saturdays. The claimant's last day of employment with the employer was on or about February 8, 2014. On Wednesday, February 12, the employer put up signs in the bar that the restaurant was closed. This was in substantial part due to the age and illness of the employer's owner. There had been some hope for a period of time after February 12 that perhaps some other family member would take over the restaurant business, but that did not occur. Therefore, the claimant's separation from the employer became permanent.

The claimant established an unemployment insurance benefit year effective April 6, 2014. He has not yet exhausted his regular 26 weeks of unemployment insurance benefit eligibility, but as of the date of the hearing his claim had become dormant, suggesting that he might have obtained employment elsewhere.

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(2) provides:

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.]

In this case, while the employer did not own the premises in which it operated its restaurant business and so did not literally "close its door," it did cease to function as a business, and while the bar/landlord continued to operate the premises as a bar, there was not a successor restaurant which continued to operate as a restaurant in the premises. Therefore, claimant is entitled to a recalculation of benefits.

In this case, that recalculation will likely be moot, as the claimant appears to no longer be unemployed.

DECISION:

The representative's June 18, 2014 (reference 03) decision is modified in favor of the claimant. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs