

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARC E WELLER**  
Claimant

**APPEAL NO: 14A-UI-10312-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WELLER & CO INC**  
Employer

**OC: 08/24/14**

**Claimant: Appellant (2)**

Section 96.3-5 – Benefit Calculation Related to Business Closure

**STATEMENT OF THE CASE:**

Marc E. Weller (claimant) appealed a representative's September 29, 2014 decision (reference 02) that concluded he was not qualified to have his claim for unemployment insurance benefits recalculated as being due to a business closure. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2014. The claimant participated in the hearing. The claimant is also the owner and sole proprietor of the employer, and so also appeared on the employer's behalf. Based on the evidence, the arguments of the claimant, 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 calculated on the basis of a business closing?

**FINDINGS OF FACT:**

The employer operated a pizza and sandwich shop in downtown Des Moines at Seventh and Locust. The claimant worked there as an employee as well as being the owner and sole proprietor. As a result of a downtown fire, access to the employer's business was substantially restricted for several months, and the employer determined to close. The last day of business for the employer was August 23, 2014. All of the employees, including the claimant, were laid off as of that date. Most of the assets of the employer had been liquidated by the time of the hearing in this case. The business was not sold to a successor. The employer does not own or operate in any other location, and did not move into any other location.

**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:

(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 employer did close its doors and ceased to function as a business. Therefore, claimant is entitled to a recalculation of benefits.

**DECISION:**

The representative's September 29, 2014 (reference 02) decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs