

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CODY W JACOB
Claimant

**E & F ENTERPRISES INC
OSCEOLA FARM & HOME**
Employer

APPEAL 15A-UI-04638-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/11/15
Claimant: Respondent (2)**

Iowa Code § 96.3(5) – Layoff/Business Closing/Benefit Redetermination

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 14, 2015, reference 07, decision that allowed the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on May 27, 2015. Claimant did not participate. Employer participated through Nicole Wilken, Office Manager.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The employer's main business location burned down in late fall 2014. Since then they have been conducting limited business activities in another physical location while their facility is being rebuilt. The employer has not ceased business and has no intention of ceasing business. They are simply rebuilding after a devastating fire. They are operating with limited staff in a rented office while the rebuilding continues. The claimant will be called back to work when the building is completed.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was not laid off as a result of the employer going out of business and, therefore, is not entitled to a redetermination of wage credits.

Iowa Code § 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) and (2) provide:

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.

(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 not go out of business in its Osceola, Iowa location. The employer just suffered a devastating fire from which they are working to recover. The business continues to operate, albeit in a smaller manner while rebuilding takes place. Under these circumstances, the claimant's benefits cannot be recalculated as a business closer. Accordingly, the administrative law judge concludes that the employer did not go out of business and, as a consequence, the claimant is not entitled to a redetermination of his wage credits.

DECISION:

The April 14, 2015, reference 07, decision is reversed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs