

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE J SCHVEIGER
Claimant

APPEAL NO: 13A-UI-01673-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

OC: 12/16/12
Claimant: Appellant (1)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Kyle J. Schweiger (claimant) appealed a representative's February 1, 2013 decision (reference 01) that concluded he was not qualified to have his claim for unemployment insurance benefit recalculated as due to a business closure of SDH Education West, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 12, 2013. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. 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 claimant started working for the employer on August 14, 2009. He worked full time as a shift manager and work study supervisor under the employer's food service contract with Cornell College in Mount Vernon, Iowa. His last day of work was on or about June 1, 2012. The claimant was laid off for lack of work at that time due to the end of the academic term. He understood at that time that the employer had lost its contract with the college, effective July 1, 2012, and that a new food service contractor, Bon Appétit Management Company, would be assuming the food service contract. He had been advised that he might be rehired by the new contractor after July 1.

There were about 30 full-time employees of the employer at the Cornell location, including the claimant and three managers, as well as three or four part-time employees. The new contractor offered employment to all but the three managers, the claimant, and one of the part-time employees; the claimant was informed in late July that the new contractor would not be offering him employment because it considered his position to have been part of management, even though the employer had not considered him management. As a result, the claimant's employment did not carry over to the new contractor, even though the new contractor continued

to operate the food service business at the Cornell location. The employer continues to operate at other locations in Iowa.

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.

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.

871 IAC 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. 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.

In this case, while the employer lost its contract to provide food services at the Cornell location, the food service itself did not go out of business, rather, a successor contractor continued to operate the business as a food service, albeit without the claimant's continued employment. Therefore, while the claimant was laid off for lack of work with the employer, he is not entitled to a recalculation of benefits as being separated due to a business closure.

DECISION:

The representative's February 1, 2013, reference 01, decision is affirmed. The claimant was laid off but not due to a business closure. Recalculation of benefits is denied.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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