

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWNA MCBROOM
Claimant

APPEAL NO: 07A-UI-10772-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/16/07 R: 03
Claimant: Appellant (1)

Section 96.3-5 – Business Closing

STATEMENT OF THE CASE:

Dawna McBroom (claimant) appealed an unemployment insurance decision dated November 19, 2007, reference 01, which denied her request to have her claim redetermined due to a business closing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 10, 2007. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant became unemployed as a result of her employer going out of business.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired part-time in May 1998 and continues as a full-time cook. She was temporarily laid off on September 16, 2007 while the store on Main Street in Lamoni, Iowa was renovated. The new store opened December 6, 2007 and the claimant has returned to work. The employer continues to operate the same business at the same location and has not permanently closed its doors.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether the claimant became unemployed as a result of her employer going out of business.

Iowa Code section 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) 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.

The determination as to whether an individual is unemployed as a result of a business closing is made in relation to the location where the individual was last employed. In other words, the inquiry is whether the employer has gone out of business at the factory, establishment or other premises where the individual was last employed.

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 evidence establishes that the employer continues to operate a business at the location at which the claimant had been working. Therefore, the claimant did not become separated from her employer as a result of her employer going out of business as that term is defined by the Iowa Employment Security law. The claimant's unemployment insurance claim should not be recalculated based upon a business closing.

DECISION:

The unemployment insurance decision dated November 19, 2007, reference 01, is affirmed. The claimant is not unemployed as a result of her employer going out of business at the location where she was last employed. Her claim should not be recalculated based on a business that has permanently closed its doors.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs