

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY K PROSS
Claimant

APPEAL NO. 10A-EUCU-00989-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YUK LAN CHO
NEW CHINA RESTAURANT
Employer

OC: 12/27/09
Claimant: Appellant (5)

Section 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation of Wage Credits)

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 22, 2010, reference 01, which held claimant ineligible for business closing benefits pursuant to Iowa Code section 96.3-5 insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 15, 2010. Claimant participated personally. Employer participated by Yuk Lan Cho, Owner.

ISSUE:

The issue presented in this appeal is whether the claimant was laid off due to the employer going out of business and, therefore, is entitled to have the wage credits re-computed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant did not work for this employer. Claimant has never even traveled to Boone Iowa. Claimant has only worked for two employers in the last five years. Neither was affiliated with the New China Restaurant or its owner.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the claimant was not laid off as a result of the employer going out of business. Claimant has never worked for this employer. The issue is moot.

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 re-compute 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.

DECISION:

The decision of the representative dated October 22, 2010, reference 01, is modified. The claimant, is not entitled to have the unemployment insurance claim re-determined as a business closing, including a re-computation of wage credits because claimant has never worked for this employer. This decision and order is moot as claimant earned no wages from this employer. The claimant's request for such re-determination and re-computation is denied and the decision is moot.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css