

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KRISTA R BERNS
Claimant

CV3 PIZZA LLC
Employer

APPEAL NO. 21A-UI-24820-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/10/21
Claimant: Appellant (2)**

Iowa Code Section 96.3(5) – Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

The claimant, Krista Berns, filed a timely appeal from the October 27, 2021, reference 01, decision that her benefits eligibility would not be redetermined as being based on a layoff due to a business closing. The deputy concluded the employer's business did not permanently close. After due notice was issued, a hearing was held on January 7, 2022. The claimant participated. The employer did not comply with the hearing notice instructions to call the designated telephone number at the time of the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the deputy's notes concerning information provided by the employer concerning the business closing issue, which notes are in the myiowauui.org database. The administrative law judge took official notice of the WAGE-A and WAGE-C record.

ISSUE:

Whether the claimant was laid off pursuant to a business closing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Krista Berns, was employed by CV3 Pizza, L.L.C. from early 2020 until October 10, 2021, when one of the business owners, Justin Buck, laid her off. The claimant worked at the employer's business location at 1138 – 7th Avenue in Marion, Iowa. The employer did not own the building in which the business was located, but instead leased the building. The employer also has a business located in Cedar Falls, but the claimant did not work at the Cedar Falls location. The claimant worked as the general manager of Urban Pie, a pizza parlor. In April 2021, the employer opened an ice cream parlor, Scoopski's, at the same business location, but with a separate entrance. The claimant then also became general manager also for the ice cream parlor. The employer consistently reported the claimant's wages to Iowa Workforce Development via the CV3 Pizza, L.L.C. employer account (number 589040) and has not reported wages for the claimant under any other account number.

The employer ceased the ice cream parlor operations effective September 30, 2020. The employer told the claimant that the employer would not be reopening the ice cream parlor, but instructed the claimant to withhold that information from other employees.

On or about October 6, 2021, the employer notified that the claimant that the employer was also discontinuing pizza parlor operations effective October 10, 2021. The employer cited nearby road construction that hindered access to the business location as the basis for closing the business. The employer again instructed the claimant to withhold from other employees the information that the pizza parlor would not be reopening. The employer directed the claimant to instruct other employees not to report for additional shifts. The employer had the claimant facilitate "tear down" of the business, which included selling equipment and returning a rented dishwasher to a vendor. Once the claimant completed the "tear down," the only piece of equipment that remained was a pizza oven that would be difficult to remove. The employer did not sell or otherwise transfer the business located in Marion. Rather, the employer permanently ceased all operations at that location. The employer continued to operate at its Cedar Falls location.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3(5)(a) provides:

a. 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.

Iowa Admin. Code r. 871-24.29(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 claimant was indeed laid off pursuant to a business closing within the meaning of the law. The employer permanently discontinued operations at the Marion location where the claimant was employed. The employer did not sell or otherwise transfer the Marion business to another business entity. The claimant is eligible to have her unemployment insurance benefits redetermined as being based on a layoff pursuant to a business closing.

DECISION:

The October 27, 2021, reference 01, decision is reversed. The claimant was laid off due to a business closing effective October 10, 2021. The claimant's unemployment insurance benefits will be redetermined accordingly.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

January 31, 2022
Decision Dated and Mailed

jet/mh