

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GREGORY M BENSON**  
Claimant

**MACKE GOWRIE INC**  
Employer

**APPEAL 17A-UI-01365-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/08/17  
Claimant: Respondent (1)**

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Iowa Code § 96.3(5) – Benefit Duration - Business Closing  
Iowa Admin. Code r. 871-24.29(1) and (2) – Business Closing

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 31, 2017, (reference 03) unemployment insurance decision that allowed redetermination of benefits based upon a business closing. The parties were properly notified about the hearing. A telephone hearing was held on February 28, 2017. Claimant participated. Employer participated through new car sales manager Marc Melody and marketing manager Lude Anstoeter. Claimant's Exhibit A was received.

**ISSUE:**

Is the claimant eligible to have the monetary determination recalculated due to business closing?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time car salesperson from December 2013, through January 6, 2017. On November 28, 2016, the business owner Gus told employees that the Gowrie, Iowa location was closing at the end of the year and the employer would offer a position at the Lake City, Iowa location about 25 miles away. He stayed to work until he completed delivery of six cars in Gowrie through the first week of January 2017. All business activity at the Gowrie location ceased on January 21, 2017.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that the claimant was laid off as a result of a business closure at the location where he worked and, therefore, is entitled to a redetermination of wage credits.

Iowa Code section 96.3(5)a provides:

**96.3 Payment — determination — duration — child support intercept.**

5. *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. (Emphasis added.)

Iowa Admin. Code r. 871-24.29(1) provides:

**871—24.29(96) Business closing.**

**24.29(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, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. 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.

Iowa Admin. Code r. 871-24.29(2) provides:

**871—24.29(96) Business closing.**

**24.29(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.

There is no evidence that the employer's premises where claimant worked was sold or transferred or that a successor employer will continue to operate the business. Accordingly, the administrative law judge concludes that the employer went out of business at the Gowrie, Iowa, location effective January 21, 2017, and, as a consequence, the claimant is entitled to a redetermination of benefits as of that date.

**DECISION:**

The January 31, 2017, (reference 03) unemployment insurance decision is affirmed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs

**NOTE TO EMPLOYER:**

If you wish to change the mailing address of record, please access your account at:  
<https://www.myiowauui.org/UITIPTaxWeb/>.  
Helpful information about using this site may be found at:  
<http://www.iowaworkforce.org/ui/uiemployers.htm> and  
<http://www.youtube.com/watch?v= mpCM8FGQoY>