

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KURT A SANBURG
Claimant

CHICAGO SPEAKEASY LTD
Employer

APPEAL 17A-UI-12226-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/12/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 21, 2017, (reference 02) unemployment insurance decision which denied the claimant's request to have his unemployment claim redetermined as a business closing. The parties were properly notified about the hearing. A telephone hearing was held on December 18, 2017. The claimant participated personally. The employer participated through Jeff Jaeger, owner.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, 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 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: The claimant is employed full-time as a server for this employer. The employer business located at 1520 Euclid Avenue in Des Moines, Iowa was closed between November 13 and 26, 2017 for a remodel. The claimant was laid off for the two weeks due to a lack of work. The location reopened effective November 27, 2017 and the claimant remains employed.

REASONINGS AND CONCLUSIONS OF LAW:

The issue presented in this appeal is whether the claimant was laid off due to his employer going out of business and is entitled to have his wage credits recomputed. The administrative law judge concludes that the claimant was not laid off as the result of the employer going out of

business at the location where the claimant was last employed. Therefore, he is not entitled to a recalculation of his wage credits.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The administrative law judge concludes that the employer did not go out of business at its Des Moines, Iowa location. Going out of business within the meaning of the Iowa Employment Security Law means any factory, establishment, or premises of an employer which closes its doors and ceases to function as a business. Rather, the claimant was temporarily laid off due to a lack of work while the employer remodeled. The claimant's separation due to a layoff is not disqualifying. However, the administrative law judge concludes that because the employer business did not permanently go out of business, he is not entitled to a recalculation of benefits.

Based on the evidence presented, the claimant was laid off from work temporarily for a two week period. The employer's business did not permanently close and therefore the claimant is not entitled to a recomputation of his wage credits.

DECISION:

The representative's decision dated November 21, 2017, (reference 02), is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn