

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MALINDA J NEECE-CURTIS

Claimant

APPEAL 19A-UI-00381-SC

**ADMINISTRATIVE LAW JUDGE
DECISION**

WIEBLERS HARLEY DAVIDSON INC

Employer

OC: 12/02/18

Claimant: Appellant (1)

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:

Malinda J. Neece-Curtis (claimant) filed a timely appeal from the January 11, 2019, reference 03, unemployment insurance decision that denied the request to redetermine the claim based upon a business closure. After due notice was issued, a hearing was held in Davenport, Iowa on January 31, 2019 at 3:00 p.m. The claimant participated. Wiebler's Harley Davidson, Inc. (employer) did not respond to the hearing notice and did not participate. The Claimant's Exhibit A was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was separated from the employment on or about November 30, 2018, when the business at the location she worked was sold to McGrath Harley Davidson. McGrath continues to operate a business at the location where the claimant worked.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes that the claimant was not laid off as a result of a business closure at the location where she worked and, therefore, is not entitled to a redetermination of 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 provides, in relevant part:

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, 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.

(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.

Since the employer transferred the business to another employer and the successor employer continues to operate the business at the premises where the claimant worked, the business is not considered to have closed. Therefore, while the claimant remains qualified for benefits based upon a layoff from this employer, she is not entitled to a recalculation of benefits.

DECISION:

The January 11, 2019, reference 03, unemployment insurance decision is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn