

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH W PITT
Claimant

APPEAL NO. 14A-UI-09964-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 06/01/14
Claimant: Appellant (1)

Section 96.3(5) – Layoff Due to Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 22, 2014 (reference 01) which denied the claimant's request to have his unemployment insurance claim redetermined as a business closing, effective June 1, 2014. After due notice was provided, a telephone hearing was held on October 14, 2014. Claimant participated. Although duly notified, the employer did not participate.

ISSUE:

At issue is whether the claimant's claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Kenneth Pitt was employed by Community Care Inc. from September 18, 2012 until May 31, 2014 when he was laid off by this employer. Community Care Inc. at that time was discontinuing providing administrative/management services to the Marion County Care Facility where Mr. Pitt had been assigned to work. The management of the Marion County Care Facility was taken over by Senco Inc., who performed the same type of administrative/managerial services for the county facility at the same business location.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's request to have his claim redetermined as a business closure was properly denied.

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(1), (2) provides:

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 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 there is still an ongoing business at that location, the business is not considered to have closed. Therefore, while the claimant remains qualified for benefits based upon a layoff from this employer, he is not entitled to recalculation of benefits based upon a business closure.

DECISION:

The representative's decision dated September 22, 2014 (reference 01) is affirmed. The claimant was not laid off due to a business closure within the meaning of the Employment Security Law, recalculation of benefits is denied.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

can/can