

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIELLE T ROBINSON
Claimant

APPEAL 19A-UI-01793-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROC TAPROOM INC
Employer

**OC: 06/24/18
Claimant: Respondent (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
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 February 14, 2019, (reference 04) unemployment insurance decision that allowed a redetermination of benefits based upon a business closure. The parties were properly notified about the hearing. A telephone hearing was held on March 14, 2019. Claimant did not register for the hearing and did not participate. Employer participated through office manager Kari Krogman. Vice president of operations Dave Brown observed. Department's Exhibit D-1 was received. Employer's Exhibit 1 was received.

ISSUES:

Is the appeal timely?

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: On February 14, 2019, Iowa Workforce Development sent a reference 04 decision allowing a recalculation of benefits based on a business closure to employer's last known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by February 24, 2019. Employer did not receive the decision until February 28, 2019. Employer filed an appeal the same day.

Employer operates Old Chicago restaurants in Iowa. Claimant worked at the Merle Hay location. On February 2, 2019, employer closed the Merle Hay location. Employer transferred all Merle Hay employees to its location in Ankeny, Iowa. On March 5, 2019, Iowa Workforce Development issued a reference 06 decision finding claimant resigned from employment without good cause attributable to employer on February 15, 2019. That decision has become final.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant filed the appeal the same day of receipt. Therefore, the appeal shall be accepted as timely.

The administrative law judge further 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 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(1) 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 a duration not to exceed four weeks.

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 administrative law judge concludes that the employer did close the business in its Merle Hay location. However, employer transferred all of its employees to its Ankeny location and claimant then resigned. Therefore, claimant was not laid off due to a business closure and is not entitled to a recalculation of benefits.

DECISION:

The February 14, 2019, (reference 04) decision is reversed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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