

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANNA K KELCHEN
Claimant

APPEAL 17A-UI-11962-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WETSCH ABBOTT & OSBORN PLC
Employer

**OC: 10/15/17
Claimant: Respondent (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:

The employer filed a timely appeal from the November 15, 2017, (reference 01) unemployment insurance decision which granted the claimant's request to have her unemployment claim redetermined as a business closing. The parties were properly notified about the hearing. A telephone hearing was held on December 12, 2017. The claimant participated personally. The employer participated through Timothy Van Vliet, attorney manager. The administrative law judge took official notice of the administrative records including the claimant's record for unemployment insurance benefits. 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 heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked full-time as a collector until October 17, 2017 when she was told the business was closing at the location where the claimant worked.

The claimant performed work at the employer's office located at 240 33rd Ave SW in Cedar Rapids, Iowa. The office space that housed the employer business in Cedar Rapids, Iowa is now vacant. The business was not sold to another owner. The employer has another business location in Des Moines, Iowa that remains open.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

Iowa Admin. Code r. 871-24.29(1) & (2) provide:

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.

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant's separation coincided with the employer permanently closing its doors and business operations at its Cedar Rapids, Iowa location, where the claimant was employed. Accordingly, the claimant's separation was due to a lack of work, and as a result of the local Cedar Rapids office closure.

Even though the employer may continue to do business elsewhere, it closed its doors at the location where claimant was last employed. *Crooks v. Employment Appeal Bd.*, 460 N.W.2d 182 (Iowa App. 1990). Since there is no longer a business operating at the Cedar Rapids, Iowa location, the administrative law judge concludes that the claimant is laid off due to the employer going out of business pursuant to Iowa Code § 96.3(5)a. Therefore, claimant is entitled to a recalculation of benefits based upon a business closing.

DECISION:

The November 15, 2017 (reference 01) decision is affirmed. The claimant was laid off due to a business closure. Recalculation of benefits is granted.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn