

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

APRIL H LAIR
Claimant

AMC EMPLOYEE BENEFITS COMPANY LL
Employer

APPEAL 18A-UI-06410-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/27/18
Claimant: Respondent (2)**

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/appellant filed a timely appeal from the June 6, 2018 (reference 01) unemployment insurance decision that found claimant was laid off because the employer is going out of business and recalculated the maximum benefit amount on the basis of business closing. Due notice was issued for a telephone hearing on June 26, 2018. Claimant did not participate. Employer participated through witness Emina Hastings. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

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:

Claimant is currently working full-time for this employer as a credit and risk analyst. Claimant has not separated from employment at this time. Claimant works at a location in Clive, Iowa. It is anticipated that the business will close sometime in October of 2018 due to a sale of assets to another company. It is anticipated that the new company will continue to operate a financial services company at the same location; however, claimant would have to apply to work for the new company at that time.

REASONING AND CONCLUSIONS OF LAW:

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 at this time.

Iowa Code § 96.3(5)a provides:

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:

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:

Business closing.

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 is currently operating the business and claimant continues to work for the business as a full-time employee, the administrative law judge concludes that the employer did not close the business at this time. Recalculation of benefits based upon business closing is denied.

DECISION:

The June 6, 2018 (reference 01) unemployment insurance decision is reversed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied. If the business closes and ceases all operation at that location at some future date, claimant may reapply for recalculation.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs