

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUZANNE M BEHNING
Claimant

APPEAL NO: 13A-UI-02354-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAC INC
Employer

OC: 10/21/12
Claimant: Appellant (2/R)

Iowa Code § 96.3(5) – Business Closing

STATEMENT OF THE CASE:

The claimant appealed a February 19, 2013 determination (reference 01) that denied her request to redetermine her claim as a business closing. The claimant participated in the hearing. The employer responded to the hearing, but was not available for the hearing. The employer did not call the Appeals Section again to participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is eligible to receive business closing benefits.

ISSUE:

Should the claimant's claim be redetermined as a business closing?

FINDINGS OF FACT:

The claimant had been working as an LPN for the employer in Dubuque, Iowa. The employer operated a facility for residents with mental health issues.

The building where the claimant worked was owned by the county. The employer paid a minimum amount to the county for the building and furniture in the building. The county sold the building and furniture to another business, Hillcrest. Hillcrest continued the same kind of service the employer provided and many of the residents stayed at the same facility.

The employer did not sell anything to Hillcrest. The employer left equipment, such as beds, dressers, desks and other furniture at the Dubuque facility because this belonged to the county, not the employer.

After the county sold the building and contents to Hillcrest, the employer opened another facility in Jackson County about 25 miles from Dubuque. Initially, the employer informed the claimant and other employees they could work at the Jackson County facility. The employer later changed this decision and the claimant and others did not have continuing employment at the employer's Jackson County facility.

REASONING AND CONCLUSIONS OF LAW:

When a claimant has been laid off because the employer at which she was last employed goes out of business, a claimant's unemployment insurance claim can be credited with one-half instead of one-third of the claimant's wages in the base period. Iowa Code § 96.3(5). Business closing or going out of business means any factory, establishment, or other premises of an employer that closes its door. A business is not considered to have gone out of business at the factory, establishment, or other premises when the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business. 871 IAC 24.29 (2).

Since the employer did not sell or transfer the building or its contents to Hillcrest because the employer only rented these from the county and the employer relocated 25 miles away, the claimant is entitled to business closing benefits. This matter will be remanded to the Claims Section to redetermine the claimant's claim under the business closing provision.

DECISION:

The representative's February 19, 2013 determination (reference 01) is reversed. The claimant's request to have her claim redetermined as a business closing is granted. This matter is Remanded to the Claims Section to redetermine the claimant's claim under the business closing provisions.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css