

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMARA J BARTH**  
Claimant

**APPEAL NO: 13A-UI-09841-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOX TROPICAL TANNING LLC**  
Employer

**OC: 06/30/13**

**Claimant: Appellant (1)**

Section 96.3-5 – Benefit Calculation Related to Business Closure

**STATEMENT OF THE CASE:**

Tamara J. Barth (claimant) appealed a representative's August 23, 2013 decision (reference 02) that concluded she was not qualified to have her unemployment insurance claim benefit eligibility recalculated as due to a business closure. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2013. The claimant participated in the hearing. Fox Tropical Tanning, L.L.C. (employer) failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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 for benefits calculated on the basis of a business closing?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 1, 2011. She worked as a retail sales receptionist at the employer's tanning salon. Her last day of work was June 30, 2013. The owner called her on that day to inform her that the business was being sold and that the new owner was not retaining the prior employees. Agency records indicate that the employer's business account has been transferred to Tropical Tan, L.L.C. While the business was closed for a few days for renovations, the business site at which the claimant once worked continues to operate as a tanning salon, now combined with another business operated by the new owner, but the new owner is using employees it already had employed.

**REASONING AND CONCLUSIONS OF LAW:**

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or other premises at which the claimant was last employed, the maximum benefits payable are

extended to the lesser of thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code § 96.3-5.

871 IAC 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 successor employer is continuing to operate the tanning salon business, albeit without retaining the claimant's employment. While the claimant was therefore laid off for lack of work from the prior owner, she is not entitled to a recalculation of benefits.

**DECISION:**

The representative's August 23, 2013, reference 02, decision is affirmed. The claimant was laid off, but not due to a business closure as defined by law. Recalculation of benefits is denied.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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