

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TAMMY L BACHELDER
Claimant

APPEAL 15A-UI-07782-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

**OC: 05/31/15
Claimant: Appellant (2-R)**

Iowa Code § 96.3(5) – Benefit Duration - Business Closing
Iowa Admin. Code r. 871-24.29(1) and (2) – Business Closing
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 2, 2015, (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 11, 2015. Claimant participated. Employer participated by Cory Boyd, District Manager.

ISSUES:

Whether claimant quit for good cause attributable to employer, and 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 was separated from the employment on April 29, 2015, when she was laid off from work due to the business being sold to a private owner. Claimant applied for work with the owner of the new store, but was not hired. Kum & Go does not have a store at that location beginning on April 29, 2015.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was laid off as a result of a business closure and sale at the location where she worked and, therefore, is eligible for benefits. She may also be entitled to a redetermination of wage credits. Her separation from employment was with good cause attributable to employer.

Iowa Code § 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 Olin, Iowa location.

Accordingly, the administrative law judge concludes that the employer went out of business effective April 29, 2015, and, as a consequence, the claimant may be entitled to a redetermination of wage credits as of the date of her claim.

Claimant did not quit her job, and was not discharged for misconduct. She was laid off after the business she was working at closed its doors, and was purchased by another entity. Claimant is eligible for benefits. The issue of wage credits redetermination should be **remanded** to Benefits Bureau for determination.

DECISION:

The July 2, 2015, (reference 02) decision is reversed. The claimant was laid off due to a business closure and sale. Unemployment insurance benefits are allowed provided claimant is otherwise eligible.

REMAND:

The issue of wage credits redetermination shall be remanded to the Benefits Bureau for determination.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs