

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRIS M HARBAUGH
Claimant

APPEAL 18A-UI-09786-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN HOME SHIELD CORP
Employer

**OC: 09/16/18
Claimant: Appellant (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:

Chris M. Harbaugh (claimant) filed a timely appeal from the September 20, 2018, reference 01, unemployment insurance decision that denied the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on October 9, 2018. The claimant participated. American Home Shield Corp. (employer) responded to the hearing notice in writing and declined to participate in the hearing.

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 was separated from employment on September 7, 2018, when the employer made the decision to outsource his department. The claimant worked at the company's location on Highway 30 in Carroll, Iowa. While the claimant's department was outsourced and he was laid off, the employer continues to conduct business out of the location where the claimant worked.

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 he worked and, therefore, is not entitled to a redetermination of wage credits.

Iowa Code section 96.3(5)a provides:

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 provides, in relevant part:

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.

(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.

Since there is still an ongoing business at that location, the business is not considered to have closed. Therefore, while the claimant remains qualified for benefits based upon a layoff from this employer, he is not entitled to a recalculation of benefits.

DECISION:

The September 20, 2018, reference 01, unemployment insurance decision is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied. If the entire business closes and ceases all operation at that location at some future date, the claimant may reapply for recalculation.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn