

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SHEILA K BACON**

Claimant

**APPEAL NO: 19A-UI-03811-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TJK ENTERTAINMENT LLC**

Employer

**OC: 04/28/19**

**Claimant: Appellant(2)**

Iowa Code § 96.3(5) -- Duration of Benefits  
871 IAC 24.29 – Business Closing

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 6, 2019, (reference 01) unemployment insurance decision which denied the claimant's request to have the unemployment claim redetermined as a business closing. The parties were properly notified about the hearing. A telephone hearing was held on May 30, 2019. The claimant participated. The employer participated through Todd McCubbin, vice president. Joyce McCubbin, treasurer, also testified. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was laid off due to a business closing.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a baker since and was separated from employment on April 26, 2019, when she was permanently laid off.

The claimant worked for the employer's business, Creative Cakes, which was located at the Crossroads Mall in Fort Dodge. The employer had the location in the mall since 2015, and the claimant had worked for the company through multiple owners since 1997. The employer sold its recipes and name to an employee, who now makes cakes from her home. The employer's location at the mall permanently closed and ceases to operate. No other business has filled the leased space used by Creative Cakes.

The employer has another business called Fort Frenzy which is a family fun center and serves pizza. It continues to operate.

## **REASONINGS AND CONCLUSIONS OF LAW:**

The issue presented in this appeal is whether the claimant was laid off due to her employer going out of business and is entitled to have her wage credits recomputed. The administrative law judge concludes that the claimant not laid off as the result of the employer going out of business at the location where the claimant was last employed. Therefore, she is entitled to a recalculation of her wage credits.

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. I

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 go out of business at its Creative Cakes location within the Crossroads Mall. Going out of business within the meaning of the Iowa Employment Security Law means any factory, establishment, or premises of an employer which closes its doors and ceases to function as a business. The evidence does not support that the employer sold its business to new owners and that the new owners continue to operate the business at the same business location where the claimant was last employed. The administrative law judge recognizes the employer's other business, Fort Frenzy, remains open. However, the company, Creative Cakes, for which the claimant was employed, no longer is in business. Therefore, the administrative law judge concludes that because the business permanently closed, the claimant is entitled to a recomputation of her wage credits.

**DECISION:**

The representative's decision dated May 6, 2019, reference 01, is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is granted.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn