

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENDALL MCALLISTER
Claimant

APPEAL NO: 11A-UI-04415-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

J & E EXPRESS
Employer

OC: 10-03-10
Claimant: Appellant (2)

Iowa Code Section 96.3(5) – Layoff Due to Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 1, 2011, reference 03, decision that determined he was not laid off due to a business closing. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 28, 2011. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for J & E Express from the summer of 2010 to October 1, 2010. He was in Atlanta, Georgia, when he received a text message from the employer telling him to return the truck to Iowa empty because it was going out of business. The claimant tried to call the employer but it would not take his calls. He returned to Iowa and cleaned out the truck. He talked to the employer a few days later and was told the employer would mail his final check but it was done with the business because it could no longer afford it.

ISSUE:

The issue is whether claim can be redetermined based upon a business closing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a business closure.

Iowa Code section 96.3-5 provides:

5. 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.

871 IAC 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. 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.

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.

Since there is no longer an ongoing business at that location, the business is considered to have closed. Therefore, the claimant is entitled to a recalculation of benefits.

DECISION:

The April 1, 2011, reference 03, decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css