

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEDE S DITHMART

Claimant

APPEAL NO: 14A-UI-10255-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC

Employer

OC: 06/01/14

Claimant: Appellant (1)

Iowa Code § 96.3(5) – Business Closing

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 22, 2014 determination (reference 06) that denied her request to have her claim re-determined as a business closing to receive extra weeks of benefits. The claimant participated at the October 22 hearing. The employer did not respond to the hearing notice or participate at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge must also deny the claimant's request to have her claim re-determined as a business closing.

ISSUE:

Should the claimant's request to re-calculate her claim as a business closing be granted or denied?

FINDINGS OF FACT:

The claimant's employment ended when her position was eliminated. The employer's business experienced financial and legal issues. Another employer, DAC, bought some of the employer's property, such as the buildings, and gave the employer's consumers or clients the opportunity to have DAC provide the same services as the employer. DAC informed the employer's employees; they could apply to work for DAC and could be hired if DAC had a position opening. In meetings prior to June 2014, DAC made statements to the effect they were not taking over the employer's business because DAC did not want the employer's liability or be responsible for the employer's fraud charges.

DAC bought property, such as the building where the claimant worked for the employer. DAC operates an office at the same building where the claimant worked for the employer. A Receiver has been appointed by a Court to sell the employer's assets and to distribute funds to the employer's creditors.

REASONING AND CONCLUSIONS OF LAW:

A claimant's unemployment insurance claim can be credited with one-half instead of one-third of the claimant's wages in the base period, when the most recent employer lays off the claimant

because the business is closed. Iowa Code § 96.3(5). Business closing or going out of business means any factory, establishment, or other premises of an employer that closes its door. A business is not considered to have gone out of business at the factory, establishment, or other premises when the employer sells or otherwise transfers the business to another employer, and the successor employer continues to operate the business. 871 IAC 24.29 (2).

The evidence establishes the employer sold or transferred part of its business to new owners, DAC. Since DAC continues to operate at the location where the claimant worked, the business closing provision does not apply in this case and the claimant's request for business closing benefits is denied. The administrative record shows a partial transfer occurred between the employer and DAC. The claimant remains eligible to receive unemployment benefits because she was laid off from work.

DECISION:

The representative's September 22, 2014 determination (reference 06) is affirmed. The claimant's request to have her claim re-determined under the business closing law is denied. The claimant remains qualified to receive regular unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs