

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALMA A GLEISER
Claimant

TIP TOP TUX LLC
Employer

APPEAL 18A-UI-04367-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/05/17
Claimant: Respondent (2)**

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:

Tip Top Tux, LLC (employer) filed a timely appeal from the April 5, 2018, reference 01, unemployment insurance decision that granted the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on May 2, 2018. Alma A. Gleiser (claimant) participated. The employer participated through Controller Maureen Spain-Wate and Payroll Jeanette Dobson. No exhibits were offered into the record.

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 has worked for the employer intermittently since March 31, 2011, when the employer bought the business. The claimant works for the employer as a part-time Pant Presser and her part of the Production Department was responsible for cleaning and preparing tuxedos for rental and sale. Her last separation occurred on November 3, 2017, when she was laid off due to a lack of work.

The claimant worked at the employer's corporate headquarters located at 500 Floyd Boulevard in Sioux City, Iowa. While on layoff, the employer relocated the claimant's part of the production department to another location. However, the employer still operates business out of the Floyd Boulevard location including, but not limited to, retail operations, accounting, and marketing.

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 she worked and, therefore, is not entitled to a redetermination of 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.

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.

The employer still conducts business at the location where the claimant was employed; therefore, the business is not considered to have closed. While the claimant remains qualified for benefits based upon a layoff from this employer, she is not entitled to a recalculation of benefits.

DECISION:

The April 5, 2018, reference 01, unemployment insurance decision is reversed. 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