

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

FLORENCE A KRAMER
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HARDEES OF SIOUX CENTER INC
660 MAIN AVE
SIOUX CENTER IA 51250

Appeal Number: 05A-UI-03480-DT
OC: 08/22/04 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party request the Appeals Section to *reopen the record* at the address listed at the top of this decision, or appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Florence A. Kramer (claimant) appealed a representative's March 28, 2005 decision (reference 01) that denied her request for recalculation of benefits as a layoff due to a business closure involving Hardee's of Sioux Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2005. The claimant participated in the hearing. Marsha Poutre appeared on the employer's behalf.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Is the claimant eligible for benefits calculated on the basis of a business closing?

FINDINGS OF FACT:

After working for a prior owner since 1982, the claimant continued working at a Spencer, Iowa restaurant owned by the new employer upon the owner's acquisition on September 15, 1989. The employer company is wholly owned by one individual. The owner also operated a catering business that did business as Spencer Catering. In 1999, the manager of the catering business offered the claimant a position in the catering business, and the claimant accepted. From that time forward, she worked part time (approximately 20 hours per week) solely in the catering business. Her last day of work was August 20, 2004, as the catering business ceased operation at that time.

The catering business prepared its food in the same building and kitchen used for the restaurant operation, but it used its own equipment. The catering business and the restaurant had separate managers. The expenditures and receipts of the catering business were maintained in a separate account. The catering business also utilized a delivery van owned personally by the individual employer owner. However, the employer reported the wages paid to the employees in the catering business under the same employer account number as the wages paid to the employees of the restaurant.

Upon the termination of the catering business, the equipment used by the catering business did not go into use by the restaurant, but rather was either sold to private persons or turned over to the individual employer owner. The individual employer owner retained the delivery van, which was not used in the restaurant operation. The approximately six employees of the catering business were not absorbed into the restaurant business, but became unemployed.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was laid off due to a business closure.

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code Section 96.3-5.

Ref 99, (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.]

Even though the restaurant operation of the employer continued to operate as a business after the claimant's layoff from the catering business, and even though both operations were owned by the same employer, the two operations were run as separate businesses. The catering business itself was not sold or transferred, and it did not continue to operate. Therefore, claimant is entitled to a recalculation of benefits.

DECISION:

The representative's March 28, 2005, reference 01, decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

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