

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

KARY J MOORE
PO BOX 127
LINCOLN IA 50652

CLASSIC KITCHEN & BATH LLC
220 E 4TH ST
WATERLOO IA 50703-4702

Appeal Number: 06A-UI-02360-DT
OC: 10/09/05 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party 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:

Classic Kitchen & Bath, L.L.C. (employer) appealed a representative's February 22, 2006 decision (reference 02) that concluded Kary J. Moore (clamant) was qualified to receive unemployment insurance benefits recalculated as business closing benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2006. The claimant participated in the hearing. Melissa McKean 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:

The claimant started working for the employer on March 23, 2005. She worked full time as show room manager of the employer's Marshalltown, Iowa location of its retail cabinetry and countertop business. Her last day in that position was on or about August 15, 2006.

The employer closed its Marshalltown operation on September 1, 2006. During the final two weeks in August, the claimant's primary responsibility was overseeing the transition of closing out the Marshalltown location and moving remaining property the employer's central business location in Waterloo, Iowa. Ms. McKean, the owner, offered the claimant an opportunity to transfer to the Waterloo store to "give it a try" but with no guarantees; the other employee of the Marshalltown location was laid off as of September 1.

The claimant worked as show room manager at the Waterloo location from about September 1 through October 9, 2005. Ms. McKean then determined that the claimant was "not a good fit" in that position and released the claimant from employment. She did not contend that the claimant was discharged for misconduct, but she asserts that the claimant should not be entitled to business closing benefits as her unemployment was not caused by a business closing, as the claimant last worked at the Waterloo location which was not closed.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was unemployed 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 § 96.3-5.

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.

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.

The administrative law judge concludes that the primary reason for the claimant's unemployment was the closure of the Marshalltown location. Had that location not closed, the claimant would not have had to try to "fit in" at the employer's Waterloo location. Further, had the claimant not agreed to the employer's offer to give it a try to work in the Waterloo location, she would clearly have been entitled to business closing benefits as of September 1, 2005. Therefore, claimant is entitled to a calculation of benefits due to a business closing.

DECISION:

The representative's February 22, 2006, reference 02, decision is affirmed. The claimant was unemployed due to a business closure. Recalculation of benefits is allowed.

ld/tjc