

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFERY L HICKMAN
Claimant

POSH HOTEL LLC
Employer

APPEAL 20R-UI-01907-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/05/20
Claimant: Appellant (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:

On January 28, 2020, Jeffery Hickman (claimant/appellant) filed an appeal from the January 23, 2020 (reference 02) unemployment insurance decision that denied the request to redetermine the claim based upon a business closure.

A telephone conference hearing was scheduled for February 11, 2020 at 1:00 p.m. However, the claimant did not follow the instructions on the hearing notice and register a telephone number at which he could be reached for the hearing. After waiting 15 minutes as a courtesy, the administrative law judge closed the record and entered a default judgment.

Claimant appealed the administrative law judge's decision to the Employment Appeal Board (EAB). The EAB granted a rehearing and remanded this matter to the administrative law judge. After due notice was issued, a hearing was held on March 18, 2020 at 3:00 p.m. The claimant participated personally. Posh Hotel LLC (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative 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:

Claimant began working for employer in 2007. Claimant was employed as a general manager. The company was sold to another company near the end of 2019, which subsequently closed the business for remodeling. As a result, claimant was laid off on December 13, 2019. As far as

claimant is aware, the property is still being remodeled. It is unclear if or when the property will re-open.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 23, 2020 (reference 02) unemployment insurance decision that denied the request to redetermine the claim based upon a business closure is REVERSED. The administrative law judge concludes that the claimant was laid off as a result of a business closure at the location where he worked and, therefore, is entitled to a redetermination of wage credits effective December 13, 2019.

Iowa Code § 96.3(5)a provides:

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. (Emphasis added.)

Iowa Admin. Code r. 871-24.29(1) provides:

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.

Iowa Admin. Code r. 871-24.29(2) provides:

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 claimant's testimony establishes that the employer closed its doors at the premises on or about December 13, 2019. While the employer's premises where claimant worked was sold or transferred to a successor employer, the evidence shows the business closed and was undergoing remodeling. It is unclear whether or when the business will continue to operate. Accordingly, the administrative law judge concludes that the employer went out of business effective December 13, 2019 and, as a consequence, the claimant is entitled to a redetermination of wage credits as of that date.

DECISION:

The January 23, 2020 (reference 02) unemployment insurance decision that denied the request to redetermine the claim based upon a business closure is REVERSED. The administrative law judge concludes that the claimant was laid off as a result of a business closure at the location where he worked and, therefore, is entitled to a redetermination of wage credits effective December 13, 2019.



Andrew B. Duffelmeyer
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March 27, 2020
Decision Dated and Mailed

abd/scn