

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRED R ROMANO
Claimant

APPEAL NO. 14A-UI-10249-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROMANO HARDWARE LLC
PAUL ROMANO
Employer

OC: 07/20/14
Claimant: Appellant (2)

Section 96.3-5 – Layoff Due to Business Closure

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 24, 2014, reference 01, which denied the claimant's request to have his unemployment insurance claim redetermined as a business closing effective July 20, 2014. After due notice was provided, a telephone hearing was held on October 22, 2014. The claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate. Agency Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Fred Romano was employed by Romano Hardware LLC beginning in September 2006. Mr. Romano was employed as a full-time sales, parts and rental clerk and was initially paid by salary. In September 2012, the business was re-organized into a rental and small engine repair service and transferred to a different account number with Iowa Workforce Development effective April 1, 2013. The business continued under the same ownership at that time and Fred Romano continued to be an employee although his pay was reduced and his duties changed.

On or about July 20, 2014, the ownership was transferred to a new owner. The business was renamed and moved from its previous location at 851 Madison Avenue, Ste 670, Council Bluffs, Iowa 51503 to a different business location at 16th & Avenue J in Council Bluffs, Iowa. Fred Romano was separated from his employment with the previous employer at that time and was not offered new employment at the newly named business or at its new business location.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was laid off due to a business closure.

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(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.

Iowa Admin. Code r. 871-24.29(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, 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.

Based upon the evidence in the record, the administrative law judge concludes that the employer went out of business at its business location located at 851 Madison Avenue, Ste 670, Council Bluffs, Iowa 51503. The claimant's testimony establishes that the employer closed its doors at the premises where Fred Romano was employed on or about July 20, 2014 and that the employer has ceased to do business at the mailing address of the premises where business had previously been conducted and Mr. Fred Romano had been employed.

Although the business was sold to new owners and continued to do business under a different business name in the community at another location, Fred Romano is entitled to have his benefits re-calculated as a business closing because he had been laid off from a location where the employer has ceased to do business. Because the employer is considered to have gone out of business at the business location where Mr. Fred Romano was employed, the claimant was laid off due to a business closure and is, therefore, entitled to recomputation of his wage credits.

DECISION:

The representative's decision dated September 24, 2014, reference 01, is reversed. Claimant, Fred Romano, is entitled to have his unemployment insurance claim redetermined as a business closure including recomputation of his wage credits. The claimant's request for such redetermination recomputation is granted.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs