

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAUL A LEEPS
Claimant

CMND, LLC
Employer

Case No. 22IWDUI0085

APPEAL 22A-UI-01445

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/05/21
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:

The claimant/appellant filed an appeal from the December 15, 2021 (Ref 01) unemployment insurance decision (reference 04) that denied the request to redetermine the claim based upon a business closure. After due notice was issued, a telephone conference hearing was held on February 16, 2022. Claimant participated personally. Employer did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible to have the monetary determination recalculated due to business closing?

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant/appellant was the Southeast Iowa Director of Operations for CMND, LLC, the employer, starting December 3, 2019. His work entailed multi-unit profit and loss analysis and leadership for the general managers of four locations of Little Caesars in southeastern Iowa. These four locations were in Iowa City, North Liberty, Burlington, and Ottumwa. He would also sometimes help with the Cedar Rapids locations, but this was only when he was specifically asked as they were under a different Director of Operations. Appellant reported to David Huffman, a member of the ownership group.

The COVID-19 pandemic was difficult on these businesses. The North Liberty store closed some time in 2020 and the Ottumwa store also closed some time before December of 2021. Appellant continued working as the Southeast Regional Manager for the locations that continued to be open in the southeastern region. On December 3, 2021, the employer contacted Leeps and informed him that the last two stores, the Iowa City and the Burlington stores, would be closing on December 4, 2021. He was laid off because these stores were closed. The stores

were not sold or transferred to another entity. To appellant's knowledge, the stores have not reopened since closing in December of 2021.

According to Appellant, several stores owned by CMND, LLC, in the northeastern region of Iowa have remained open. These stores are run by the Northeastern Regional Manager. The position of Northeastern Regional Manager was filled at the time that appellant was laid off. Appellant inquired about other work with the employer at the time that he was laid off but was not placed in another position.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant was laid off because of a business closure at the location where he worked and, therefore, is entitled to a redetermination of wage credits based upon 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. (emphasis added).

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 (emphasis added).

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. (emphasis added).

In this case, the employer closed the locations where the appellant worked. It did not sell or otherwise transfer the business. According to the appellant, those stores continue to be closed. While the employer maintains several locations of Little Caesars in Iowa, appellant was not employed at those locations. In *Crooks v. Employment Appeal Board*, 460 N.W. 2d. 182 (Iowa Ct. App. 1990), the court held that when the employer chose to cease its business in a specific location, it ceased to function as a business at those premises. It went on to say that the purpose of the statute was to provide enhanced unemployment benefits to employees who are laid off and have no hope of returning to their jobs because their employers have closed their businesses. In that case, the court found that while the employer continued to do business elsewhere, it closed its doors in the location where Crooks was last employed, and she was entitled to benefits under Iowa Code section 96.3(5). In this case as in *Crooks*, the employer continued business in some of its stores after appellant's lay off. However, these were not the stores in which appellant had been employed. The stores where appellant had been employed remained closed. Therefore, claimant remains qualified for benefits based upon a layoff from this employer, and he is entitled to a recalculation of benefits due to business closing.

DECISION:

The December 15, 2021 (reference 01) unemployment insurance decision is **REVERSED**. The claimant was laid off due to a business closure. Recalculation of benefits is allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Alla R. Mintzer
Administrative Law Judge

February 22, 2022
Decision Dated and Mailed

ARMZ/aa

cc: Paul A Leeps, Claimant (by first class mail)
CMND, LLC, Employer (by first class mail)
Natali Atkinson, IWD (by email)
Joni Benson, IWD (By AEDMS)

Case Title: LEEPS V. CMND, LLC

Case Number: 22IWDUI0085

Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Alla R. Mintzer-Zaprudsky". The signature is written in a cursive, flowing style.

Alla Mintzer-Zaprudsky, ALJ