

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

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Appeal Number: 05A-UI-11679-SWT
OC: 01/02/05 R: 04
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)

871 IAC 24.29(1) – Business Closing

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 2, 2005, reference 04, that concluded the claimant was eligible for business-closing benefits. A telephone hearing was held on December 1, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Kelly Green participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked as a production worker for the employer from August 14, 2004, to January 2, 2005. The claimant filed a new claim for unemployment insurance benefits with an effective date of January 2, 2005. He was on a temporary layoff until April 30, 2005, when he was called back to work. He worked until September 16, 2005, when he was again laid off for lack of work. His supervisor informed him that he was off the schedule because should keep in

contact with the employer about returning to work. The workers had been informed that the production line at the Davenport location would be closing at the beginning of November 2005.

Since the claimant knew that work would be ending, he applied for employment at the employer's plant in Peoria, Illinois, on September 16, 2005. A short time later, the employer offered a job at the Peoria, Illinois, which he declined. On November 4, 2005, the employer closed its business located in Davenport, Iowa, and there was no longer any work available at that location.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is entitled to have his benefits redetermined as a layoff due to a business closing.

871 IAC 24.29(1), (2) provide:

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.

(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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer contended that the claimant was discharged for absenteeism, but the preponderance of the evidence establishes he was laid off and that the employer had no further work available after November 4, 2005, when the employer closed down the production line.

This case, however, must be remanded to determine whether the claimant failed to accept an offer of suitable work without good cause.

DECISION:

The unemployment insurance decision dated November 2, 2005, reference 04, is affirmed. The claimant is entitled to have his claim redetermined as a layoff due to a business closing. The issue of whether the claimant failed to accept an offer of suitable work without good cause sometime after September 16, 2005, is remanded to the Agency for investigation and to make a determination.

saw/tjc