

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATHEW J GRAY
Claimant

APPEAL NO: 12A-UI-07193-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVE BARTLETT CONSTRUCTION INC
Employer

OC: 04/29/12
Claimant: Appellant (2)

Section 96.3-5 – Business Closing
871 IAC 24.29 – Definition of Closing

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 15, 2012, reference 02, that denied his request for business closing benefits effective April 29, 2012. A telephone hearing was held on July 11, 2012. The claimant participated. The employer submitted Exhibit 1 letter.

ISSUE:

Whether claimant was laid-off due to a business closing.

FINDINGS OF FACT:

The administrative law judge having heard the stipulation of the parties finds: The claimant was laid-off for lack of work on May 23, 2012 due to a pending business closing. Dave Bartlett passed away on March 13 and claimant along with the other employees completed unfinished work. Claimant states a public auction was held on July 10 where the company equipment was sold. An employer representative submitted a letter with a death certificate but did not request to otherwise participate in this matter.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.3-5 provides:

5. 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.

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 the claimant was laid-off for lack of work on May 23, 2012 from a business that permanently closed on July 10, 2012.

It is apparent that the company owner passed away in March 2012 and claimant with co-workers finished ongoing business when laid-off on May 23. An employer representative submitted a statement the business was dissolving and the construction equipment auction on July 10 provides confirmation of the business closing. Claimant is entitled to receive business closing benefits.

DECISION:

The department decision dated June 15, 2012, reference 02, is reversed. The claimant was laid-off on May 23, 2012 due to a business closing. Business closing benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css