

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY J DRAPER
Claimant

APPEAL NO. 11A-UI-04847-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINEVILLE CLIO COMM SCHOOL DIST
Employer

OC: 06/27/10
Claimant: Respondent (1)

Section 96.3-5 – Layoff Due to Business Closure

STATEMENT OF THE CASE:

Lineville Clio Community School District filed a timely appeal from a representative's decision dated April 4, 2011, reference 02, which re-calculated his unemployment insurance claim as a business closure effective June 27, 2010. After due notice was issued, a telephone hearing was held May 9, 2011. Although duly notified, the claimant did not participate. The employer participated by Sheryl Porter, Board Secretary and Dave Daughton, Superintendent.

ISSUE:

The issue is whether the claim can be re-determined as a business closing.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Terry Draper was employed by Lineville Clio Community School District from February 2006 until June 31, 2010 when his position as a full-time custodian was eliminated. Mr. Draper previously worked at both of the school district's elementary and high school as a custodian. When the school district's high school permanently closed on or about June 31, 2010 Mr. Draper was laid off as his job had been eliminated. Subsequently the school district hired another individual to work half time as a cook and half time as a custodian at the elementary school until the expected closing date of on or about July 1, 2011.

It is the employer's position that Mr. Draper's unemployment insurance claim should not be re-calculated as a business closing as the elementary school had not permanently ceased operation as of June 31, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue presented in this appeal is whether the claimant was laid off due to his employer ceasing operation and going out of business at the location where Mr. Draper was employed and whether the claimant is therefore entitled to have his wage credits re-computed.

The administrative law judge concludes that the claimant was laid off as a result of the employer ceasing operations of its high school facility and going out of business and therefore is entitled to re-calculation of his wage credits.

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.

871 IAC 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.

The administrative law judge concludes that the employer went out of business in its high school facility at the Lineville Clio Community School District where Mr. Draper was employed and that the closure took place on or about June 27, 2010. Going out of business means any establishment or premises of employment which closes its doors and ceased to function as an ongoing business/employment entity. The evidence in the record establishes that the claimant was laid off from his employment with the Lineville Clio Community School District at the time of and because the school district closed its high school facility permanently. The employer elected to eliminate Mr. Draper's job position at that time and did not offer the claimant continuing employment in any other capacity. The employer elected to hire another individual to work at the grade school working half time as a cook and half time as a custodian. Based upon the nature of the high school closing, there is no reasonable expectation that Mr. Draper will be recalled to employment based upon a change in economic conditions or other factors which would cause the school district to resume operations at the high school facility. Accordingly, the administrative law judge concludes that the employer is considered to have gone out of business and as a consequence the claimant was laid off due to his employer going out of business and the claimant is therefore entitled to re-computation of his wage credits.

DECISION:

The representative's decision dated April 4, 2011, reference 02, is affirmed. The claimant, Terry Draper, is entitled to have his unemployment re-determined as a business closing effective June 27, 2010.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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