

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL J RAFELD

Claimant

APPEAL NO. 07A-UI-06108-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERIZON CORP SVCS GROUP INC

Employer

**OC: 12/17/06 R: 02
Claimant: Appellant (2)**

Section 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation
of Wage Credits)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 15, 2007, reference 01, which held claimant ineligible for business closing benefits pursuant to Iowa Code section 96.3-5 insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 5, 2007. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence.

ISSUE:

The issue presented in this appeal is whether the claimant was laid off due to the employer going out of business and, therefore, is entitled to have the wage credits re-computed. The second issue is whether the appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant was laid off by employer on December 18, 2007 because the business unit was closing. Claimant worked at 11 Eleventh Avenue in Grinnell, Iowa, Office B. The working unit was separate and distinct from all other business in the same building. Claimant had separate management and building access. Claimant's unit was completely eliminated from that location and relocated to someplace outside of Grinnell. All employees were laid off at the same time. The employer no longer conducts business at that location in Office B.

Claimant was advised by a Workforce Development representative that she did not need to appeal. Claimant was told that if one decision were reversed, then all decisions were reversed. Such was not the case. Claimant was ready to appeal prior to the deadline. Claimant delayed appealing because of the assertions from Workforce Development representatives.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the claimant was laid off as a result of the employer going out of business and, therefore, is entitled to a re-computation of wage credits. The complete elimination of a separate and distinct business unit is a business closing. All employees were laid off with the location vacated.

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.

Claimant's appeal is timely. The delay was caused by advice given from Workforce Development representatives. Jurisdiction exists to determine all issues.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after

notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

DECISION:

The decision of the representative dated May 15, 2006, reference 01, is reversed. The claimant is entitled to have the unemployment insurance claim re-determined as a business closing, including a re-computation of wage credits. The claimant's request for such re-determination and re-computation is granted. Claimant's appeal is timely.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw