

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

BARRY J VANENGELLENHOVEN
PO BOX 1071
OSKALOOSA IA 52577-1071

APAC CUSTOMER SERVICES
OF IOWA LLC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02934-RT
OC: 03-09-04 R: 03
Claimant: Appellant (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)

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

STATEMENT OF THE CASE:

The claimant, Barry J. VanEngelenhoven, filed a timely appeal from an unemployment insurance decision dated March 9, 2004, reference 03, determining that his request to have his unemployment insurance claim redetermined as a business closing was denied. After due notice was issued, a telephone hearing was held on April 6, 2004 with the claimant participating. Carrie Mundt, Center Business Manager, participated in the hearing for the employer, APAC Customer Services of Iowa LLC. Matt Saville, Supervisor, was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer until he was discharged on August 12, 2003. That separation concerning disqualification for benefits was litigated in three different appeals as follows: 03A-UI-10977-LT at reference 01; 03A-UI-11312-LT at reference 02; and 03A-UI-11311-LT at reference 01 for another benefit year. All three appeals allowed the claimant benefits and all three were appealed to the Employment Appeal Board and affirmed by the Employment Appeal Board. That issue is not now before the administrative law judge. The employer alleges that the claimant was discharged for falsification of employer documents and was discharged on August 12, 2003. On September 24, 2003, the employer announced some partial closing of the office where the claimant worked. Positions were then eliminated at that office on November 21, 2003. The claimant was employed at the Ottumwa, Iowa, office of the employer. That office has not closed and remains open and the employer has not moved to a different job site. However, many positions were eliminated at that office but the employer still does business through that office. The claimant was not laid off for a lack of work but was discharged. The discharge has been determined to be non-disqualifying.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant was separated due to his employer going out of business and is therefore entitled to have his wage credits recomputed. The administrative law judge concludes that the claimant was not separated from his employment as a result of the employer going out of business and, therefore, he is not entitled to a recomputation of his wage credits or a redetermination of his unemployment insurance claim.

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), (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, 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.

(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 did not go out of business at its location in Ottumwa, Iowa, where the claimant was employed. The employer's witness, Carrie Mundt, Center Business Manager, credibly testified that the employer did not close its location but is still open conducting business. The claimant conceded as much. The employer did eliminate some positions but this did not occur until November 21, 2003 and, in any event, the employer is still operating a business. The employer did not close its door and cease to function as a business. Further, the claimant was not laid off but was discharged. Even though that discharge is not disqualifying, the evidence establishes that the claimant was not laid off for a lack of work. The administrative law judge notes that the claimant's discharge occurred on August 12, 2003 and positions were not eliminated until over three months thereafter on November 21, 2003. Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was not separated from his employment as a result of a business closing and, as a consequence, the claimant is not entitled to recomputation of his wage credits nor to a redetermination of his unemployment insurance claim.

DECISION:

The representative's decision of March 9, 2004, reference 03, is affirmed. The claimant, Barry J. VanEngelenhoven, is not entitled to have his unemployment insurance claim redetermined as a business closing, including a recomputation of his wage credits and a redetermination of his unemployment insurance claim, and the claimant's request for such redetermination and recomputation is denied.

tjc/kjf