

**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**

**PAULA L ACOSTA
6410 KELLING ST
DAVENPORT IA 52801-1736**

**FLAT ROCK METAL PROCESSING LLC
PO BOX 1090
FLAT ROCK MI 48134**

**Appeal Number: 06A-UI-05671-DT
OC: 03/26/06 R: 04
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 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Paula L. Acosta (claimant) appealed a representative's May 19, 2006 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits that were recalculated as benefits due to a business closure by Flat Rock Metal Processing, LLC (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 19, 2006. The claimant participated in the hearing. The employer responded on June 7, 2006 indicating that it would not be participating in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible for benefits calculated on the basis of a business closing?

FINDINGS OF FACT:

The claimant started working for the employer on December 22, 2005. She worked part-time (up to 39 hours per week) as a crane operator in the employer's Eldridge, Iowa, metal processing facility. Her last day of work was March 24, 2006. Effective that date, the Eldridge operation was sold to a new owner, Precision Strip, Inc.

There had been approximately 150 employees at the Eldridge facility under the employer's ownership. Under the new ownership, only about 35 of those employees were retained by the new owner. The remaining employees, including the claimant, were not hired by the new owner, as the new owner brought in its own employees to fill those positions. The new owner continues to operate the Eldridge facility. There has been a transfer of business experience from the employer to the new owner.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was laid off due to a business closure.

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of 26 times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under most circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of 39 times the claimant's weekly benefit amount or the total of the claimant's wage credits. Iowa Code § 96.3-5.

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.

Here, while the claimant did lose her position, the successor owner continues to operate the facility at which the claimant last worked. Therefore, the claimant is not entitled to a recalculation of benefits, but remains eligible for her normal unemployment insurance benefits resulting from her layoff separation from employment with the employer.

DECISION:

The representative's May 19, 2006, reference 03, decision is affirmed. The claimant was laid off, but not due to a business closure as defined by law. Recalculation of benefits is denied. Normal unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

ld/cs