

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

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ALLIED INTERSTATE INC  
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COLUMBUS OH 43216-1160

Appeal Number: 04A-UI-08566-DT  
OC: 05/02/04 R: 03  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Angela L. Swatek (claimant) appealed a representative's July 30, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits calculated as due to a business closure. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on August 30, 2004. Prior to the hearing being held, the administrative law judge determined that no hearing was necessary and a decision was made on the record.

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

## FINDINGS OF FACT:

Subsequent to the issuance of the representative's decision on July 30, 2004, concluding that the employer's location at which the claimant worked was not going out of business, a new representative's decision was issued on August 16, 2004 (reference 03), concluding that the employer's business location was closing and that the claimant was eligible for benefits calculated under the business closing formula. The August 16 decision effectively negates the July 30 decision; the employer is now placed in the position of appealing the determination that business closing benefits should be allowed, if it so desires.

## 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 usual 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 weekly benefit amount or the total of the claimant's wage credits. Iowa Code Section 96.3-5.

871 IAC 24.29(2), (1) provide:

(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.

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.

Therefore, claimant is entitled to a recalculation of benefits.

DECISION:

The representative's July 30, 2004, reference 01, decision is reversed. The claimant was laid off due to a business closure. Recalculation of benefits is allowed.

ld/kjf