

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN J HUNT
Claimant

APPEAL NO. 11A-UI-04846-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINEVILLE CLIO COMM SCHOOL DIST
Employer

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

Section 96.3-5 – Layoff Due to Business Closing

STATEMENT OF THE CASE:

The employer filed a timely appeal from an unemployment insurance decision dated April 4, 2011, reference 03, which held the claimant eligible to receive unemployment insurance benefits and finding the claimant's maximum benefit amount to be re-calculated on the basis of a business closing. After due notice was issued, a telephone hearing was held May 9, 2011. The claimant participated personally. The employer participated by Ms. Sheryl Porter, Board Secretary and Mr. Dave Daughton, Superintendent.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Steven Hunt was employed by Lineville Clio Community School District from August 8, 2008 until June 4, 2010 when he was laid off work permanently due to the closing of the school district's high school. Mr. Hunt worked as a full-time business teacher and physical education teacher assigned to work at the Lineville Clio high school.

The claimant's employment with the Lineville Clio Community School District came to an end because the school district permanently closed the high school where Mr. Hunt was employed. No additional work was available to Mr. Hunt in any other capacity.

It is the employer's position that the claimant should not be entitled to re-calculation of his unemployment insurance benefits based upon a business closure as the school district's elementary school remained open and will not officially permanently close until July 1, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue presented in this appeal is whether the claimant was laid off due to his employer going out of business and therefore is 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 permanently closing its high school facility. The facility will not reopen and the claimant will not be employed at the elementary school.

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 Lineville Clio Community School District's high school facility on or about June 4, 2010. Going out of business means any establishment or premises of employment of an employer which closes its doors and ceases to function as an employing entity. The evidence in the record establishes that the employer closed the doors of its high school facility permanently and will not reopen them. The claimant will not be re-employed in any other capacity as his employment at the high school was employment in the position of a full-time business teacher/physical education teacher. Employment of that nature will not be available to the claimant with the Lineville Clio Community School District based upon the permanent closing of its 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 the employer going out of business and the claimant is therefore entitled to re-computation of his wage credits.

DECISION:

The unemployment insurance decision dated April 4, 2011, reference 03, is affirmed. The claimant, Steven Hunt, is entitled to have his unemployment insurance be re-determined as a business closing effective June 6, 2010.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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