

**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**

**RICHARD A MOSER
PO BOX 860
ELKADER IA 52043**

**FRED CARLSON COMPANY
900 MONTGOMERY ST
DECORAH IA 52101**

**Appeal Number: 06A-UI-04149-S2T
OC: 01/01/06 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 – Layoff Due to Business Closing

STATEMENT OF THE CASE:

Richard Moser (claimant) appealed a representative's April 11, 2006 decision (reference 02) that determined that his request to have his unemployment insurance claim redetermined as a business closing was denied. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 2, 2006. The claimant participated personally. Fred Carlson Company (employer) did not provide a telephone number where it could be reached and, therefore, did not participate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in the year 2003, as a full-time loader and

operator. On December 10, 2005, the employer laid the claimant off for lack of work. The employer did not completely close its business operation.

REASONING AND CONCLUSIONS OF LAW:

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 his wage credits recomputed. The administrative law judge concludes that the claimant was not laid off as a result of the employer going out of business.

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(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 did not go out of business. 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. The claimant's testimony establishes that the employer did not completely close its doors. Accordingly, the administrative law judge concludes that the employer is not considered to have gone out of business and, as a consequence, the claimant was not laid off due to the employer going out of business. The claimant is, therefore, not entitled to a recomputation of his wage credits.

DECISION:

The representative's April 11, 2006 decision (reference 02) is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied.

bas/tjc