

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN E SCISCO**  
Claimant

**APPEAL NO. 12A-UI-08754-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANSELL HAWKEYE INC**  
**SUSAN HOLLAND HR MGR**  
Employer

**OC: 06/17/12**  
**Claimant: Appellant (1)**

Section 96.3-5 – Layoff Due to Business Closing

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the July 17, 2012, reference 02, decision that denied the request to have the claim re-determined as a business closing. After due notice was issued, a telephone hearing was held on August 29, 2012. The claimant did participate. The employer did participate through Ms. Susan Holland, Human Resource Manager.

**ISSUE:**

The issue is whether the claimant was laid off due to a business closing.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: John Scisco was employed as a full-time maintenance worker for Ansell Hawkeye, Inc. until May 17, 2012 when he was discharged from employment. During this time the business was in the process of closing down its facility in Fort Dodge, Iowa. At the time of hearing, the business continues to operate with minimal staff assigned to duties completing the closure of the employer's facility in Fort Dodge, Iowa.

It is apparently Mr. Scisco's position that because he was discharged prior to the effective date of the business closure that he should immediately be approved for re-determination of his claim as a business closure effective June 17, 2012 although the business continues to be open at the time of hearing.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not laid off due to a business closure as of June 17, 2012 pending a closure of the facility on August 31, 2012.

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.

While the claimant was separated in a period of ramping down business, the business is not yet closed and continues to operate at reduced staffing levels. Therefore, the claimant is not entitled to a recalculation of benefits at this time. At such time as the business does close the claimant shall be eligible for re-determination of benefits.

**DECISION:**

The representative's decision dated July 17, 2012, reference 02, is affirmed. The claimant was not laid off due to a business closure. Recalculation of benefits is denied until such time as the business does actually close. At that point benefits shall be recalculated.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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