

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN D RAMSEY
Claimant

APPEAL NO. 09A-UI-16212-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCURATE MECHANICAL CO INC
Employer

**Original Claim: 07/05/09
Claimant: Appellant (1)**

Section 96.3(5) – Duration of Benefits
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 21, 2009, reference 01, which denied the claimant's request to have his unemployment insurance claim redetermined as a business closing effective July 5, 2009. After due notice, a telephone conference hearing was scheduled for and held on December 2, 2009. The claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Lynn Ramsey.

ISSUE:

Whether the claimant was laid off pursuant to a business closing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant began working for the employer as a refrigeration, air conditioning, and heating technician in January 2000. He was a member of Plumbers & Steamfitters Union Local 33 out of Des Moines, Iowa. On July 3, 2009, the employer had a meeting with all of the service technicians and construction personnel. The employer's representative told the assembled employees that he was sorry to tell them that he had locked the doors. All equipment was to be turned in to the employer. The claimant complied.

On July 7, 2009, the claimant went to the union hall and asked to be placed on the list for available work. Before he could receive another assignment from the union, the claimant was approached by the employer. The claimant met the boss for breakfast and was informed that he (the boss) was going to keep the shop open on a limited basis. He asked the claimant to come back to work for him. The claimant agreed and came back to work. He then retired on October 1, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue for the administrative law judge is whether the evidence in the record establishes that the claimant was laid off due to a business closing.

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 evidence establishes that the claimant was laid off for a short period of time, but that the layoff was not the result of a business closing. The employer, after initially announcing that the business was closing, decided to keep the shop open on a limited basis and asked the claimant to come back to work for him. The claimant agreed to do so and worked for the employer until his retirement on October 1, 2009.

Based on the evidence in the record and application of the law cited above, the administrative law judge concludes that the claimant's unemployment insurance benefits should not be redetermined as being based on a business closing.

DECISION:

The representative's decision dated October 21, 2009, reference 01, is affirmed. The claimant was temporarily laid off and is eligible for benefits, provided he is otherwise eligible. However, the claimant was not laid off due to a business closing. The claimant's benefits should be determined accordingly.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw