

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA A CARLSON

Claimant

APPEAL NO. 09A-UI-07556-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENNOX INDUSTRIES INC

Employer

**Original Claim: 03/29/09
Claimant: Appellant (1)**

Section 96.3-5 – Business Closing at Location Where Claimant Worked

STATEMENT OF THE CASE:

Lisa Carlson filed a timely appeal from a representative's decision dated May 12, 2009, reference 01, that denied the claimant's request to have her unemployment insurance claim re-determined as a business closing effective March 29, 2009. After due notice, the hearing was scheduled for and held on June 10, 2009 via telephone conference call. The claimant participated personally. The employer participated by Ms. Connie White, human resource manager, Urbandale facility.

ISSUE:

The issue is whether the claimant was laid off pursuant to a business closing at the location where she was assigned to work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa Carlson was employed by Lennox Industries, Inc., as a full-time worker until March 31, 2009, when she was laid off. The employer is in the process of closing its Urbandale, Iowa facility, but has not closed the facility at the time of hearing. Approximately one-half of the employer's workforce has been laid off. The employer plans to separate an additional number of workers in September of 2009 and to permanently close the facility in Urbandale, Iowa, by approximately March 31, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue presented in this appeal is whether the claimant was laid off due to her employer going out of business at the facility where the claimant was assigned to work and therefore entitled to have her wage credits re-computed. The administrative law judge concludes, based upon the evidence in the record, that although the claimant was laid off work, the employer has not gone out of business at the Urbandale facility and thus is not entitled to a re-computation of wage credits at this time.

It is noted that both the claimant and the employer believe that it is inequitable that some employees have been allowed a re-computation of wage credits based upon their separation from the Urbandale facility and others have not been allowed to re-computed their wage credits as 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.

While the claimant was laid off 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 re-calculation of benefits at this time. At such time as the business does close, claimant shall be eligible for a re-determination of benefits.

DECISION:

Representative's decision dated May 12, 2009, reference 01, is affirmed. The claimant was not laid off due to a business closure. Re-calculation of benefits is denied until such time as the business does actually close. At that point, benefits shall be re-calculated.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/kjw