

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A TUTHILL
Claimant

APPEAL NO. 07A-UI-02843-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNIQUE BALANCE INC
SUBSIDIARY OF POMEROY INC**
Employer

**OC: 07/23/06 R: 04
Claimant: Appellant (1)**

Iowa Code § 96.3(5) – Layoff Due to Business Closing

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 14, 2007, reference 01, decision that denied recalculation of benefits based upon a business closing. After due notice was issued, a telephone conference hearing was held on April 12, 2007. All claimants were represented by claimant Charles Polkinghorn and union representative Wayne Laufenberg. Employer participated through Ross Hemesath.

ISSUE:

The issue is whether the claim can be redetermined based upon a business closing.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Manufacturing and maintenance employees, including claimant, worked at the business location at 2225 Kerper Boulevard in Dubuque, Iowa, until approximately August 26, 2006, when there was a work stoppage and strike. The employer and the union entered into a settlement agreement on or about October 15, 2006 that included a severance package and an agreement that no manufacturing or maintenance employees would return to work and the manufacturing would move to Canada and West Virginia, as had been considered for approximately a year. There is clerical and administrative office work still going on in part of that building at that location but no manufacturing or maintenance work. The machines were torn out by management personnel and an independent contractor. The office work will continue either at that location or at another location in the Dubuque area if the building, which is currently for sale, is sold. In that event, employer intends to lease office space elsewhere in the Dubuque area.

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 on October 15, 2006, but there is a pending closure dependent on sale of the building and relocation of the clerical and administrative staff.

Iowa Code § 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 claimant was laid off in a period of ramping down the manufacturing and maintenance parts of the business operations, the business is not yet closed and continues to operate with clerical and administrative staff duties performed at that location. Therefore, while claimant may be otherwise eligible for 26 weeks' of benefits, he is not entitled to a recalculation of benefits at this time. At such time as the business does close and ceases all operations at that location, claimant may reapply for a redetermination of benefits.

DECISION:

The March 14, 2007, reference 01, decision 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 location. At that point, benefits shall be recalculated.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw