

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D VAUGHN
Claimant

APPEAL NO. 07A-UI-08543-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LOVELAND WATERFALLS LTD
WATERFALLS CAR WASH**
Employer

**OC: 07/15/07 R: 03
Claimant: Respondent (2)**

Section 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation of Wage Credits)

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 29, 2007, reference 03, which held claimant eligible for business closing benefits pursuant to Iowa Code section 96.3-5 insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 10, 2007. Claimant participated personally. Employer participated by Steve Fernau, Manager and Rocky Loveland, Owner. Exhibit One was admitted into evidence.

ISSUE:

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 the wage credits re-computed.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off by employer on July 18, 2007 because the Jefferson Street car wash was closing. Employer was under threat of condemnation by the city of Waterloo. Employer chose to cut a deal with the city prior to prosecution of eminent domain condemnation. Employer conducted business at two car wash locations in Waterloo. The second location was about two miles away on Tower Park Drive. Employer continues to conduct business at the second location through date of hearing. Both car wash locations were assets of one corporation. Employees routinely went back and forth between the two locations on an as-needed basis.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the claimant was not laid off as a result of the employer going out of business and, therefore, is not entitled to a re-computation of wage credits. Employer is a corporation that owned two car wash locations. The two car wash businesses were assets of one corporation. The corporation still conducts business in Waterloo at one of the locations. The business is not permanently closed. Only one-half of the business has closed. The employer is still conducting business in Waterloo as a car wash.

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 re-compute 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.

DECISION:

The decision of the representative dated August 29, 2006, reference 03 is reversed. The claimant is not entitled to have the unemployment insurance claim re-determined as a business closing, including a re-computation of wage credits. The claimant's request for such re-determination and re-computation is denied.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css