

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DEAN W VENNINK
PO BOX 3
MANILLA IA 51454

DALTON AUTO SALES INC
1904 HWY 30 E
DENISON IA 51442

Appeal Number: 04A-UI-03313-DT
OC: 02/01/04 R: 01
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Dalton Auto Sales, Inc. (employer) appealed a representative's March 15, 2004 decision (reference 01) that concluded Dean W. Vennink (claimant) was qualified to receive unemployment insurance benefits that were calculated as a layoff due to a business closure. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2004. This appeal was consolidated for hearing with five related appeals, 04A-UI-03314-DT, 04A-UI-03315-DT, 04A-UI-03316-DT, 04A-UI-03111-DT, and 04A-UI-03317-DT. The claimant participated in the hearing as well as four other claimants. Brian Dalton appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Is the claimant eligible for benefits calculated on the basis of a business closing?

FINDINGS OF FACT:

The employer operates a used auto sales and automobile service business on a single business site upon which three buildings were located. The employer employed approximately 15 employees. After-hours on February 4, 2004, a fire destroyed the main building, but left the two smaller buildings intact. As a result, the claimant, a full time service manager, was off work beginning February 5. The employer has resumed partial operations in the two smaller buildings with five employees, including two mechanics, one clean-up person, one office person, and one sales person. The employer plans to rebuild and reopen its main building. Building plans have been submitted and approved by the city of Denison; however, the employer is still awaiting an insurance settlement before it can contract for construction of a new building. The employer's best-case estimate is that the building could be rebuilt and open in September 2004. The employer intends to recall the claimant to employment if the claimant is still available at the time the building reopens.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was laid off due to a business closure and thus eligible for an extended period of benefits.

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of 26 times the individual's weekly benefit amount or the total of the claimant's base period wage credits. However, under usual circumstances, if the claimant is laid off due to the claimant's employer going out of business at the factory, establishment, or other premises at which the claimant was last employed, the maximum benefits payable are extended to the lesser of 39 times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code Section 96.3-5.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

871 IAC 24.29(2), (1) provide:

(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.

Business closing.

(1) Whenever an employer at a factory, establishment, or other premises goes out of business at which the individual was last employed and is laid off, the individual's account is credited with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period, which may increase the maximum benefit amount up to 39 times the weekly benefit amount or one-half of the total base period wages, whichever is less. This rule also applies retroactively for monetary redetermination purposes during the current benefit year of the individual who is temporarily laid off with the expectation of returning to work once the temporary or seasonal factors have been eliminated and is prevented from returning to work because of the going out of business of the employer within the same benefit year of the individual. This rule also applies to an individual who works in temporary employment between the layoff from the business closing employer and the Claim for Benefits. For the purposes of this rule, temporary employment means employment of a duration not to exceed four weeks.

While the employer's business operations are currently reduced, it has not ceased to function as a business. At this time, the claimant's unemployment is not due to a business closing, but was a layoff for lack of work; if the employer subsequently does go out of business due to the fire damage to its business, the claimant can refile a claim seeking additional weeks of benefits.

However, at this time, the claimant is not entitled to extended business closing benefits. In practical terms, this means that the claimant is eligible for up to 26 weeks worth of regular benefits, if he is otherwise eligible. The administrative law judge takes administrative notice that a separate representative's decision was issued to the parties on March 17, 2004 (reference 02), that concluded that the claimant was no longer temporarily unemployed, and that he was therefore subject to the work search requirements in order to retain his eligibility for unemployment insurance benefits. Iowa Code Section 96.19-38-c defines temporary unemployment as follows:

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

No appeal was filed from the March 17, 2004 (reference 02) decision, and it has become final. Therefore, until such time as the employer might recall the claimant to employment, the claimant is eligible for up to 26 weeks work of benefits if he is otherwise eligible, but he must be conducting a search for other employment.

DECISION:

The representative's March 15, 2004 (reference 01) decision is modified in favor of the employer. The claimant was laid off due to lack of work, but not due to a business closing. Extended business closing benefits are not allowed. Regular benefits are allowed, if the claimant is otherwise eligible.

ld/kjf