

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN W FARRINGTON
Claimant

APPEAL NO. 12A-UI-07813-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF PELLA
Employer

OC: 04/22/12
Claimant: Respondent (1)

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 June 21, 2012, reference 01, 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 July 23, 2012. Claimant participated personally with witness Bob Boyd, Supervisor. Claimant disconnected from the hearing unexpectedly and did not call back to request participation. Employer participated by Mike Nardini, City Administrator; Mary Pommer, Human Resource Specialist; Larry Peterson, Electric Director; and Mike Norman, Electric Superintendant. Exhibits One and A were 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 April 19, 2012 because employer permanently shut down its electrical generating plant located at 519 Oskaloosa Street in Pella, Iowa. Employer started buying all electricity from an outside source. Employer still maintains electrical generating capacity for backup at a Washington Street diesel facility. The Oskaloosa Street plant is totally separate and apart from the Washington Street facility. Employer has four full-time employees working at the Oskaloosa Street location for maintenance and to watch power transfer. The Oskaloosa Street facility will completely close December 15, 2012 when a new transfer station takes over all power transfer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the claimant was laid off as a result of the employer going out of business and, therefore, is entitled to a re-computation of wage credits. The location 519 Oskaloosa Street is closed as of May 8, 2012 for the purpose of electrical

generation. Current activities at 519 are temporary in nature and necessary to the complete shutdown effective December 15, 2012. The 519 Oskaloosa Street facility is a permanently closed electrical generation facility. The employee was laid off due to this business at 519 Oskaloosa Street permanently ceasing operation. It is the location of the closing that is evaluated not whether the city can produce electricity from another plant. The fact that the city still runs another backup generator and transfers electricity from other stations is not relevant. The business closing is site specific. Here the site of operation at 519 Oskaloosa is permanently closed for electrical generation. Business closing benefits shall be allowed.

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.

DECISION:

The decision of the representative dated June 21, 2012, reference 01, is affirmed. The claimant is 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 granted.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css

