

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENT E DARNALL
Claimant

APPEAL NO. 08A-UI-03312-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VICTOR PLASTICS INC
Employer

**OC: 02/10/08 R: 03
Claimant: Appellant (1)**

Section 96.3-5 – Business Closing

STATEMENT OF THE CASE:

Kent E. Darnall (claimant) appealed a representative's March 18, 2008 decision (reference 02) that denied his request to redetermine his unemployment insurance claims as a business closing. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2008. The claimant participated in the hearing. Victor Plastics, Inc. (employer) responded to the hearing notice, but the employer's witness was not available when contacted for the hearing. During the hearing, Claimant Exhibit A was offered and admitted as evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Should the claimant's claim be redetermined as a business closing?

FINDINGS OF FACT:

The claimant started working for the employer on January 12, 2006. He worked as a full-time maintenance employee. The employer filed for bankruptcy. On February 15, 2008, the employer gave the claimant a letter indicating his employment ended because the employer closed the business. (Claimant Exhibit A)

The employer, however, did not close the business. The employer continued operating the business under the bankruptcy court in an attempt to find a company to buy the business. The claimant understood another business has offered to buy the employer's business, but does not know when or if the sale will be finalized.

REASONING AND CONCLUSIONS OF LAW:

When a claimant has been laid off because his employer, at which he was last employed, goes out of business, a claimant's unemployment insurance claim can be credited with one-half instead of one-third of the claimant's wages in the base period. Iowa Code § 96.3 (5). Business closing or 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. 871 IAC 24.29 (2).

The evidence establishes the employer has not yet gone out of business or ceased to function as a business. Even if the employer sells the business to another entity, if that entity continues to operate the business, the business closing provisions do not apply to the claimant. At this time, the claimant's request to redetermine his claim as a business closing is denied.

DECISION:

The representative's March 18, 2008 decision (reference 02) is affirmed. The claimant's request to redetermine his claim as a business closing is denied because the employer has not closed its business.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw