

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A CHUDZINSKI
Claimant

APPEAL NO. 08A-UI-09473-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGC FLAT GLASS NORTH AMERICA
Employer

OC: 01/13/08 R: 02
Claimant: Respondent (2-R)

Section 96.3-5 – Business Closing
871 IAC 24.29(1) – Business Closing
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 10, 2008, reference 03, that concluded the claimant was eligible for business-closing benefits. A telephone hearing was held on October 30, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Sharon Miller participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant eligible for business-closing benefits?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a production technician for the employer from February 28, 2007, to January 16, 2008. He voluntarily quit employment on January 16, 2008. In April 2008, the employer notified workers that it was closing the facility where the claimant worked in Hampton, Iowa.

The claimant has received three weeks of benefits based on a business closing.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was laid off due to a business closing.

Iowa unemployment insurance law provides additional benefits for claimants laid off due to their employer going out of business at the factory, establishment, or other premises at which they were last employed. Iowa Code section 96.3-5. The unemployment insurance rules further provide business-closing benefits to be paid retroactively to a claimant who is temporarily laid off with the expectation of returning to work and is prevented from returning to work because of the employer has gone out of business during the claimant's benefit year. 871 IAC 24.29(1).

Finally, the rules define going out of business as any factory, establishment, or other premises of an employer that closes its doors and ceases to function as a business. An employer is not considered to have gone out of business at the factory, establishment, or other premises if 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 claimant was not entitled to business closing benefits because he was not laid off due to a business closing and was not temporarily laid off with the expectation of returning to work.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated October 10, 2008, reference 03, is reversed. The claimant is not entitled to have his claim redetermined as a layoff due to a business closing. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs