

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

JASON M LEWIS
4505 CRANE CREEK RD
WATERLOO IA 50703

AUTO TECH I LLC
AUTOMATION TECHNOLOGY
PO BOX 1506
WATERLOO IA 50704-1506

Appeal Number: 05A-UI-01609-DT
OC: 08/22/04 R: 03
Claimant: Appellant (2)

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:

Jason M. Lewis (claimant) appealed a representative's February 4, 2005 decision (reference 01) that concluded he was not qualified to receive extended unemployment insurance benefits calculated as a layoff due to a business closure from Auto Tech I, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record on February 17, 2005, a telephone hearing was held on March 2, 2005. The claimant participated in the hearing and presented testimony from one other witness, Steve Elliott. The employer received the hearing notice and responded by calling the Appeals Section on March 1, 2005. The employer indicated that a representative would not be available at the scheduled time for the hearing on March 2, 2005. However, no reason was given as to why the employer had waited until the day before the hearing if there was a schedule conflict, and why the employer had not sought a

postponement or rescheduling at least three days prior to the scheduled hearing as required. Therefore, the employer did not participate in the hearing. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on November 13, 2000. He worked full time as a sales engineer in the employer's custom machine design and manufacturing business. His last day of work was August 20, 2004. He was on a leave of absence through August 27, 2004; however, when he contacted the employer at that time to return to work, he was informed that the employer's owners had determined to close the business, starting with not taking any new sales orders for new business, but to only finish work on current orders. Therefore, the claimant's position as the sales representative was the first to be laid off, effective immediately.

Prior to the claimant's layoff, there had been ten employees of the employer. In approximately December 2004, one other person was laid off, and another employee left for new employment, reducing the employer's workforce to seven. Two of the remaining employees, one of which is Mr. Elliott, determined to enter into a partnership with a third person and purchase the assets of the employer's business. As of the date of the hearing, the sale had not been finalized but was imminent. The assets purchased would be the employer's equipment, and a lease of the employer's facilities would be arranged. However, the new entity, Cedar Industries, is not intended to take on any of the employer's liabilities. Upon completion of the sale of the assets, the remaining employees of the employer will be laid off; the employees of Cedar Industries will only be the three partners. The business of Cedar Industries will be only as a machine shop, repairing or building machine parts on a short-term basis, not large-scale, long-term manufacturing of entire machines, as had been the employer's business.

REASONING AND CONCLUSIONS OF LAW:

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

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 24.29(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.

The imminent transfer of the employer's business assets to Cedar Industries is not a transfer where the "successor" will continue to operate the prior business. The employer's business operation is ceasing to function. Therefore, claimant is entitled to a recalculation of benefits.

DECISION:

The representative's February 4, 2005, reference 01, decision is reversed. The claimant is laid off due to a business closure. Recalculation of benefits is allowed.

ld/kjf