

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID D KRUSE
ET AL**
Claimant

APPEAL NO. 09A-UI-06129-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD LUMBER INC
Employer

**OC: 02/15/09
Claimant: Appellant (2)**

Section 96.3-5 – Duration of Benefits (Employer Going Out of Business/Re-computation
of Wage Credits)

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 31, 2009, reference 02, which held claimant ineligible 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 May 15, 2009. Claimant participated personally. Employer participated by David Anderson, Vice President. Donald Peterson participated as a party to the Et Al case. Exhibits A and B 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 February 10, 2009 because the employer ceased doing business at the location 9850 Douglas Avenue, Urbandale, Iowa. Two employees remained at the premises until the property is sold for security reasons. All normal business has ceased and inventory moved from that location. Employer no longer conducts its normal business at that Urbandale location.

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. Since the only personnel on site are there temporarily to maintain a secure premises until the property is sold, this is a business permanently closed.

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 March 31, 2009, reference 02, is reversed. 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