

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY L JURGENS
Claimant

APPEAL NO: 07A-UI-03166-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHICAGO RIVET & MACHINE CO
Employer

**OC: 12-17-06 R: 01
Claimant: Appellant (2)**

Section 96.3-5 – Layoff Due to Business Closing

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 26, 2007, reference 03, decision that denied the claimant's request to have his unemployment insurance benefits redetermined. After due notice was issued, a hearing was scheduled to be held on April 16, 2007. Because the issue appealed was resolved administratively prior to the hearing in the appellant's favor (see reference 04 representative's decision), no testimony was necessary and no hearing was held.

ISSUE:

The issue is whether the claimant's benefits should be redetermined.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision appealed has been amended by the reference 04 representative's decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's benefits should be redetermined as a business closing as was done by reference 04.

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.

871 IAC 24.29(1)(2) provides:

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. 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.

(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.

Since the decision appealed has been amended, the original representative's decision, reference 03, is reversed.

DECISION:

The March 26, 2007, reference 03, decision is reversed. The claimant's benefits shall be redetermined based upon a business closing. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs