

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY A WOOKIEY
Claimant

APPEAL NO: 10A-UI-04908-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HATFIELD MOTORSPORTS INC
Employer

OC: 11/22/09
Claimant: Appellant (4/R)

Section 96.3-5 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Timothy A. Wookey (claimant) appealed a representative's March 16, 2010 decision (reference 04) that concluded that while he was still eligible for regular unemployment insurance benefits, he was not qualified to receive unemployment insurance benefits under a recalculation of benefits due to a business closure. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on May 5, 2010.

Another hearing was scheduled on an appeal by another claimant/appellant, John Goss, for hearing on April 30, 2010, under 10A-UI-04332-DT. At the time for that hearing but in lieu of a formal hearing being held, the parties and the administrative law judge agreed that no hearing was necessary and a decision was made on the record and a stipulation from the employer, reversing the decision that there had not been a business closure. Additionally, the employer requested that similar stipulated agreements be entered for three other pending appeals by other former employees. Given that the basis for each of the appeals of these other claimants/appellants was the same, it would have been appropriate for the matters to have been consolidated for hearing. While most appropriately the administrative law judge would have preferred to obtain the consent of the other claimants/appellants, given that the decision to be entered is in their favor, the administrative law judge will proceed to issue consolidated decisions on those pending appeals, specifically: 10A-UI-04908-BT, regarding Timothy Wookey; 10A-UI-04664-NT, regarding Todd Poole; and 10A-UI-04444-BT, regarding Jeremy Haney. If any of these claimants/appellants objects, they should notify the administrative law judge in writing within ten days of the issuance of this decision, and a separate hearing will be conducted and determination entered in their case.

ISSUE:

Are the claimants eligible for benefits calculated on the basis of a business closing?

FINDINGS OF FACT:

The employer began going out of business in November 2009. The business closed its doors to the public on December 31, 2009. The business did not operate after that date. All employees but two were laid off by that date; the remaining two did not include any of the employees

addressed in this decision. The retained employees were only kept on temporarily to assist in the liquidation of the business through an auction of the assets.

The claimant's layoff from the employer had occurred on or about November 19, but was a layoff due to the pending closure. A prior Agency audit of the question of closure had occurred on or about December 15, concluding that the business was not then closed. However, this predated the closure of the business to the public on December 31.

REASONING AND CONCLUSIONS OF LAW:

Normally, the maximum total amount of benefits payable to an eligible individual during a benefit year is the lesser of twenty-six 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 thirty-nine times the claimant weekly benefit amount or the total of the claimant's wage credits. Iowa Code § 96.3-5.

871 IAC 24.29(2) provides:

(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.

871 IAC 24.29(1) 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. 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.

As of December 31, 2009 the business was closed. The claimant was not recalled from his layoff because the business closed. Therefore, the claimant is entitled to a recalculation of benefits under the business closure provisions.

DECISION:

The representative's March 16, 2010 (reference 04) decision is modified in favor of the claimant. The claimant was laid off due to what became a business closure. Recalculation of benefits is allowed. The matter is remanded to the Claims Section for a review and determination as to whether there are other claimants whose claims might be affected.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs