

**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**

**DALLAS C LINKENMEYER
717 ELM DR
MASON CITY IA 50401-2215**

**LINKENMEYER IMPLEMENT INC
PO BOX 290
RICEVILLE IA 50466-0290**

**Appeal Number: 04A-UI-03666-RT
OC: 02-08-04 R: 02
Claimant: Appellant (1)**

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 – Duration of Benefits (Employer Going Out of Business/Recomputation
Of Wage Credits)**

STATEMENT OF THE CASE:

The claimant, Dallas C. Linkenmeyer, filed a timely appeal from an unemployment insurance decision dated March 24, 2004, reference 01, denying claimant's request to have his unemployment insurance claim redetermined as a business closing effective February 8, 2004. After due notice was issued, a telephone hearing was scheduled for April 26, 2004 at 1:00 p.m. Neither the claimant nor the employer responded to the notice of appeal by calling in telephone numbers where any witnesses could be reached for the hearing as instructed in the notice of appeal. Consequently, no hearing was held. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having examined the record, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on March 24, 2004, reference 01, determining that the claimant's request to have his unemployment insurance claim redetermined as a business closing effective February 8, 2004 was denied because records indicate the employer's business did not permanently close but was actually sold to a new owner. A field audit was done indicating that the business was sold to Walters Family Investments LLC on February 2, 2004 and not all employees remained with the new business but two were currently working for the new employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant was laid off due to his employer going out of business and therefore is entitled to have his wage credits recomputed. The administrative law judge concludes that the claimant was not laid off as a result of the employer going out of business and, therefore, he is not entitled to a recomputation of his wage credits.

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) 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, 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.

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.

The administrative law judge concludes that the employer, Linkenmeyer Implement, Inc., sold its business to another, Walters Family Investments LLC, who continued to operate the business utilizing at least two employees of the employer. This is contained in the field audit report. Neither the employer nor the claimant participated in the hearing. No fact-finding appears to have occurred. The claimant in his appeal states that the employer, Linkenmeyer Implement, Inc., is no longer in business as of January 31, 2004 at which time his job was terminated and he was told to seek other employment. All of this may be true but does not answer the issue as to whether the employer sold its business and the field audit report determines that it did. Not only that but the field audit report indicates that at least two employees were retained by the new purchaser. 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. The administrative law judge concludes that that is what occurred here. Accordingly, the administrative law judge concludes that the employer did not go out of business as defined above and, as a consequence, the claimant was not laid off due to his employer going out of business and he is not entitled to a recomputation of his wage credits.

DECISION:

The representative's decision of March 24, 2004, reference 01, is affirmed. The claimant, Dallas C. Linkenmeyer, is not entitled to have his unemployment insurance claim redetermined as a business closing, including a recomputation of his wage credits, and the claimant's request for such redetermination and recomputation is denied.

tjc/b