

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

MIRANDA M MORISTON
107 DELOSS CT
SPENCER IA 51301

BOJI HOUSE INC
TACO HOUSE
1614 TERRACE PARK BLVD
MILFORD IA 51351

Appeal Number: 06A-UI-03610-JTT
OC: 12/25/05 R: 01
Claimant: Respondent (4)

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
871 IAC 24.29 – Business Closing

STATEMENT OF THE CASE:

Boji House filed a timely appeal from the March 20, 2006, reference 05, decision that claimant Miranda Moriston's benefits had been redetermined as being based on lay off due to a business closing. After due notice was issued, a hearing was held on April 18, 2006. Claimant Miranda Moriston did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Owner Kim Buller represented the employer. The administrative law judge took official notice of the Agency's administrative records pertaining to the claimant and this employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a restaurant doing seasonal business in the Okoboji lake resort area. The employer closed for the 2005 business season on October 23, 2005, and laid off Miranda Moriston in connection with the seasonal closing. Ms. Moriston had worked for the employer as full-time counter help. The employer called Ms. Moriston back to work for the 2006 business season on March 5, 2006. The employer continues to conduct business on the same premises where Ms. Moriston was employed. The employer changed from a proprietorship to a corporation in 2005, but continued under the same ownership.

REASONING AND CONCLUSIONS AT LAW:

The question for the administrative law judge is whether the evidence in the record establishes that Ms. Moriston was laid off due to a business closing. It does not.

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(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 evidence in the record establishes that employer did not go out of business, but merely closed its seasonal business for the 2005 season in October 2005 and reopened for the 2006 season in early March 2006. Based on the evidence in the record and application of the law

cited above, the administrative law judge concludes that Ms. Moriston's unemployment insurance benefits should not have been redetermined as being based on a business closing. This decision does nothing to disturb Ms. Moriston's eligibility for regular benefits, but instead limits those benefits to the regular 26-week maximum and the regular maximum benefit amount. Ms. Moriston continues to be eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Moriston.

DECISION:

The Agency representative's decision dated March 20, 2006, reference 05, is modified as follows. The claimant was *not* laid off due to a business closing and her benefits should be determined accordingly. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kkf