

**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**

**MONA K THAYER
2900 S 44TH ST
LINCOLN NE 68506-3326**

**ELLIOTT'S INC
FREEDOM FOOD SERVICE
PO BOX 521
NORTH BEND NE 68649**

**Appeal Number: 06A-UI-05186-CT
OC: 04/16/06 R: 01
Claimant: Respondent (2)**

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(2) – Business Closing

STATEMENT OF THE CASE:

Elliott's, Inc. filed an appeal from a representative's decision dated May 8, 2006, reference 01, which held that Mona Thayer was laid off due to a business closing. After due notice was issued, a hearing was held by telephone on June 1, 2006. Ms. Thayer participated personally. The employer participated by Dennis Elliott, Owner.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Thayer began working for Elliott's, Inc., doing business as Freedom Food Service, on October 18, 1988 and last performed services on

February 2, 2006. The employer rents space in the Ro-Mech automotive plant in Red Oak, Iowa, and operates a food service within the rented space. Ms. Thayer stopped working in February because of domestic abuse issues involving her husband, who worked for Ro-Mech.

In 2005, Ro-Mech began discussions regarding downsizing its operation with the ultimate intent of relocating to Mexico. Because of the downsizing, Freedom Food Service determined that there was not sufficient employees in the plant to warrant continuing the cafeteria portion of the operation. Therefore, the cafeteria will cease operation in July of 2006. Thereafter, the employer will continue to provide vending machine service at the location until the plant closes. It is anticipated that Ro-Mech will close sometime in 2007.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Thayer is unemployed due to her employer going out of business. In determining whether a business has closed, the focus is on the facility where the claimant last worked. An employer is considered to have gone out of business if it has closed its doors and ceased to function as a business. See 871 IAC 24.29(2). Freedom Food Service operated a cafeteria and maintained vending machines at Ro-Mech. In response to Ro-Mech's downsizing, the employer downsized its own operation. However, Freedom Food Service continues to operate at the location where Ms. Thayer was last employed. The fact that the employer discontinued one portion of its operation is not sufficient to support a finding that the business has closed. Moreover, Ms. Thayer left the employment for personal reasons that had nothing to do with the downsizing of the employer's operations.

For the reasons stated herein, the administrative law judge concludes that Ms. Thayer is not unemployed as a result of Freedom Food Service going out of business at the location where she last worked. Accordingly, her claim will not be recalculated.

DECISION:

The representative's decision date May 8, 2006, reference 01, is hereby reversed. Ms. Thayer's request to have her claim re-determined as a business closing is denied as the employer has not gone out of business at the location where she last worked.

cfc/kkf