

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

SHELBY M BOEH
925 – 1ST ST APT 3
DEWITT IA 52742-1860

WOMENS HEALTH SERVICES
EAST IOWA INC
2635 LINCOLN WAY STE A
CLINTON IA 52732

SHELBY M BOEH
819 – 9TH ST
DEWITT IA 52742

Appeal Number: 06A-UI-08111-HT
OC: 07/02/06 R: 04
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) – Business Closing

STATEMENT OF THE CASE:

The claimant, Shelby Boeh, filed an appeal from a decision dated August 2, 2006, reference 01. The decision denied her request to recalculate her claim as a business permanently closed. After due notice was issued, a hearing was held by telephone conference call on August 29, 2006. The claimant participated on her own behalf. The employer, Womens Health Services East Iowa, Inc., provided a telephone number of (563) 241-1316. That number was dialed at 8:01 a.m. and the only response was a voicemail. A message was left indicating the hearing would proceed without the employer's participation unless a representative contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 8:09 a.m. the employer had not responded to the message and did not

participate in the hearing or request a postponement of the hearing as required by the hearing notice.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Shelby Boeh worked for Women's Health Services from January 14, 2004 until June 30, 2006, as a full-time family support worker. The program for which she was working, Hope's Healthy Family, was funded by a grant obtained by the employer. Her job was doing in-home visits but her office, where she did occasionally see clients, was at 2635 Lincoln Way, Suite A. That is the location of Womens Health Services and it remains open and conducting the same business at the present time. The claimant was laid off because the grant for the Hope's Healthy Family had run out.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was laid off due to a business closing.

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 claimant was laid off because the grant program for which she was working had expired. However, she was employed by Women's Health Services through the grant. It remains open and doing business at the same address where the claimant was employed. Under the criteria of the above Administrative Code section, the business cannot be considered to be closed.

DECISION:

The representative's decision of August 2, 2006, reference 01, is affirmed. Shelby Boeh was not laid off due to a business closing. Her request to redetermine her claim as a business permanently closed is denied.

bgh/cs