

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

PAULA R MILLER STINSON
210 NE 7TH ST
ANKENY IA 50021-1832

J & M PET RANCH INC
C/o MARY L MILLER
1009 NW 4TH ST
ANKENY IA 50021

Appeal Number: 04A-UI-00716-DT
OC: 11/30/03 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 – Benefit Calculation Related to Business Closure

STATEMENT OF THE CASE:

Paula R. Miller-Stinson (claimant) appealed a representative's January 14, 2004 decision (reference 02) that concluded she was not qualified to have her unemployment insurance benefits recalculated for a business closure involving J & M Pet Ranch, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2004. This appeal was consolidated for hearing with one related appeal, 04A-UI-00715-DT. The claimant participated in the hearing. Mary Lou Miller appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Is the claimant entitled to benefits calculated on the basis of a business closing?

FINDINGS OF FACT:

The employer was a family business in which the owner, Ms. Miller, and her daughter, the claimant, worked as well as two other employees. The claimant's last day of work at the business was November 30, 2003. Effective midnight December 1, 2003, the business was transferred by Ms. Miller to a new owner who brought in his own employees. Only one part-time employee that had worked under Ms. Miller's employment continued working under the new ownership for a period of time. The sale included all inventory and fixtures. A transfer of the lease for the premises was arranged with the landlord. The new owner obtained the rights to continue using the prior business name. The new owner has continued to operate the same business in the same location.

The administrative law judge takes administrative notice of Agency records that indicate that the employer's account, 058390, is now inactive and that the liabilities have been transferred to the successor employer's account, 326559, effective December 1, 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for recalculated business closure benefits.

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 business did not close its doors; rather, the business continued to operate, and simply the ownership and employees changed. While the separation is not disqualifying for basic unemployment insurance benefits, the claimant is not entitled to a recalculation of benefits as a business closure.

DECISION:

The representative's January 14, 2004, reference 02, decision is affirmed. The claimant is not unemployed due to a business closure. Recalculation of benefits is denied. Regular unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

ld/kjf