

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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Case No.: 11-ALJ-22-0440-AP

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Kimberly M. Morrow,

Respondent,

v.

South Carolina Department of Employment  
and Workforce and A Wing and A Prayer, Inc.,

Defendants,

Of whom South Carolina Department of Employment  
and Workforce is

Appellant,

and A Wing and A Prayer, Inc. is also

Respondent.

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**RECORD ON APPEAL**

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Debra Tedeschi  
SC Bar # 15307  
E.B. "Trey" McLeod, III  
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SC Department of Employment & Workforce  
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Spartanburg, SC 29306  
Pro Se Respondent

**RECEIVED**  
AUG 06 2012  
**SC Court of Appeals**

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Certificate of Counsel

JAN 17 2012

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

Kimberly M. Morrow, )  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of )  
Employment and Workforce and )  
A Wing and A Prayer, Inc., )  
)  
Respondents. )  
\_\_\_\_\_ )

Docket No. 11-ALJ-22-0440-AP

**ORDER**

**STATEMENT OF CASE**

This matter is an appeal by Kimberly M. Morrow (Appellant) from a decision of the South Carolina Department of Employment and Workforce (Department) finding the Appellant ineligible for unemployment benefits, pursuant to S.C. Code Ann. § 41-35-110 (Supp. 2010). Appellant argues on appeal that the evidence in the Record does not support the Department’s finding that Appellant does not meet the availability requirements of the statute and therefore is ineligible for benefits. The Administrative Law Court (ALC or Court) has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 41-35-750 (Supp. 2010). Upon consideration of the briefs and Record, the decision of the Appellate Panel is reversed.<sup>1</sup>

**BACKGROUND**

Appellant is Vice President of A Wing and A Prayer, Inc. (“Employer”) which trades as Blue Star BBQ Restaurant. She worked as the operations manager of Blue Star BBQ Restaurant from September 16, 2009 through January 23, 2011 when the restaurant was closed because of declining business. Following the restaurant’s closure, the Appellant filed an initial claim for unemployment benefits with the Department on January 30, 2011. By notice dated March 10, 2011, the Appellant was notified that a Claims Adjudicator with the Department had determined that Appellant was ineligible for benefits beginning January 30, 2011. The following was stated as the reason for the ineligibility determination:

**FILED**

JAN 12 2012

<sup>1</sup> This case was decided without oral argument pursuant to ALC Rule 39.

“As an officer of a corporation, you have control over your unemployment insurance benefits. Since unemployment insurance benefits are meant for those who are unemployed through no fault of their own, you are ineligible for benefits under the South Carolina Code.”

The Appellant disagreed with the Claims Adjudicator's determination and filed an appeal with the Department's Appeal Tribunal. On April 13, 2011, an evidentiary hearing was held before an administrative hearing officer at which the Appellant and Appellant's husband, Christopher Morrow, testified. The Appellant's husband, as Treasurer of A Wing and A Prayer, Inc., testified on behalf of the Employer. During the hearing, the Appellant and Mr. Morrow testified that Mr. Morrow is a minority shareholder in A Wing and A Prayer, Inc. According to stock certificates placed in evidence at the hearing, Mr. Morrow owns 3500 shares in A Wing and A Prayer, Inc., and 6500 shares are owned by Raymond D. Hicks. The Appellant contends that she managed the restaurant and made all decisions in the restaurant's day-to-day operations, which included decisions on hiring and firing personnel and managing the payroll. According to the Appellant, as the manager, she received a salary and the company paid unemployment insurance on the salary she received, therefore Appellant feels she is eligible for unemployment benefits. Appellant also candidly admitted during the hearing that she is actively looking for a location to open a new restaurant, and that she devotes approximately twenty (20) hours per week to this endeavor. She also stated that she is actively seeking employment and attending school to obtain her GED, but she is willing to stop her school attendance if she finds full-time employment.

The employer witness, Mr. Morrow, produced a payroll summary of salary paid to the Appellant from September 1, 2009 through January 23, 2011, and a profit and loss statement for the same period for Blue Star BBQ which reflects that the restaurant incurred a net loss of \$113,552.88.

Following the hearing, the hearing officer issued a decision on April 4, 2011 which affirmed the claims adjudicator's determination. However, in his decision, the hearing officer cited S.C. Code Ann. § 41-35-110 (Conditions of eligibility for benefits), as the basis for the decision. Specifically, the hearing officer's decision states:

The South Carolina Employment Security law provides in § 41-35-110 that an individual must be able, available and actively seeking work in order to be eligible for benefits for each week claimed. The claimant must also have *unrestricted exposure to the labor market* and be unemployed through no fault of his/her own.

In this case, the controlling factor(s) are the claimant's time spent in seeking to open a new business as well as her enrollment in school, both of which restrict her exposure to the labor market and as such, renders her ineligible for benefits under the guidelines of the law.

Appellant disagreed with the hearing officer's ruling, and filed an appeal with the Department's Appellate Panel. The case was reviewed by the Panel on July 19, 2011, and on July 21, 2011, the Appellate Panel's decision affirming the decision of the Appeal Tribunal was mailed to the Appellant. Appellant filed an appeal with this Court on August 16, 2011.

#### ISSUE ON APPEAL

Did the Department err in finding that the Appellant does not meet the availability requirements of S.C. Code Ann. § 41-35-110 and therefore is ineligible for unemployment benefit?<sup>2</sup>

#### STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). See Gibson v. Florence Country Club, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See S.C. Code Ann. §§ 1-23-380, -600(E) (Supp. 2010); Gibson, 282 S.C. at 386, 318 S.E.2d at 367; McEachern v. S.C. Employment Sec. Comm'n, 370 S.C. 553, 557, 635 S.E.2d 644, 646-47 (Ct. App. 2006). The standard used by appellate bodies to review agency decisions is provided by Section 1-23-380(5) of the South Carolina Code (Supp. 2010). See § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380). That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of

<sup>2</sup> The claims adjudicator determined that the denial of Appellant's request for unemployment benefits was based solely upon her position as an officer in the corporation. However, the Appellate Panel did not make any finding of fact or conclusion of law regarding that basis, and thus, the issue is not before this Court. Because the Appellate Panel reached a different determination than the claims adjudicator did, it is important to note that the Appellate Panel may review a decision "on the basis of evidence previously submitted in the case" or it may "direct the taking of additional evidence." S.C. Code Ann. § 41-35-710 (as amended by 2010 S.C. Act No. 146, § 94). Thus, the Appellate Panel "has the authority to make its own findings of fact consistent with or inconsistent with those of the appeal tribunal." Merck v. S.C. Employment Sec. Comm'n, 290 S.C. 459, 460-61, 351 S.E.2d 338, 339 (1986) (interpreting the same language as quoted above). In reviewing the Appellate Panel's decision, this Court must affirm the factual findings of the Appellate Panel if they are supported by substantial evidence. Id. at 461; 351 S.E.2d at 339; McEachern, 370 S.C. at 561, 635 S.E.2d at 649.

the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. Friends of the Earth v. Pub Serv. Comm’n of S.C., 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. Waters v. S.C. Land Res. Conservation Comm’n, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, “a reviewing court will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Natural Res., 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting Lark v. Bi-Lo, Inc., 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)).

### DISCUSSION

A claimant applying for unemployment benefits in South Carolina is required to meet certain eligibility requirements in order to receive these benefits. S.C. Code § 41-35-110 (Conditions of eligibility for benefits) addresses eligibility requirements for unemployment benefits, and in pertinent part states:

An unemployed insured worker is eligible to receive benefits with respect to a week only if the department finds he:

(3) is able to work and is available for work at his usual trade, occupation, or business or in another trade, occupation, or business for which he is qualified based on his prior training or experience; is available for this work either at a locality at which he earned wages for insured work during his base period or, if the individual has moved, to a locality where it may reasonably be expected that work suitable for him under the provisions of Section 41-35-120(3)(b) is available; and, in addition to having complied with subsection (2), is himself actively seeking work . . . .

The determination of whether a claimant is available for work is a question of fact to be established by the Department based upon the facts and circumstances of the case. Wellington v. S.C. Employment Sec. Comm'n, 281 S.C. 115, 314 S.E.2d 37 (Ct. App. 1984). The burden rests with the claimant to show compliance with unemployment benefit eligibility requirements, and this also includes "a duty to show availability for work and a reasonable effort to obtain employment." Wellington, 281 S.C. at 117, 314 S.E.2d at 38 (citing Hyman v. S.C. Employment Sec. Comm'n, 234 S.C. 369, 108 S.E.2d 554 (1959)). "Available for work," as referenced in S.C. Code Ann. § 41-35-110(3), has been construed to mean an "unrestricted exposure to the labor market." Murphy v. S.C. Employment Sec. Comm'n, 328 S.C. 542, 544, 492 S.E.2d 625, 627 (Ct. App. 1997) (quoting Wellington, 281 S.C. at 117, 314 S.E.2d at 38); see also Hyman, 234 S.C. at 379, 108 S.E.2d at 559 ("We conclude that availability for work implies an unrestricted exposure of the applicant for benefits to the normal labor market to which he has been customarily attached.").

In this case, the Court concludes that the Record does not support the Appellate Panel's determination that Appellant failed to meet the availability requirements under S.C. Code Ann. § 41-35-110. The Department determined that Appellant spent a substantial amount of time pursuing the opening of a new business and was currently working towards obtaining her GED. Specifically, the Department determined that Appellant spent approximately 20 hours per week pursuing the opening of a new restaurant, and that she spent approximately 16 hours per week in fulfilling her educational requirements. Thus, the Department concluded, because Appellant was unavailable approximately 36 hours per week, her activities limited her availability for employment.

However, the mere fact that Appellant is a student does not, as a matter of law, establish that he or she is unavailable for work. See e.g., Frey v. Review Bd. of Indiana Employment Sec. Div., 446 N.E.2d 1341 (Ind. Ct. App. 1983). While Appellant did testify that she spends

approximately 16 hours per week in pursuant of her education, there was no additional testimony to specify when and how she spends that time and if those time periods interfered with her ability to work. See e.g., Scardina v. Com., Unemployment Compensation Bd. of Review, 113 Pa.Cmwlt. 511, 513, 537 A.2d 388, 390 (Pa. Commw. Ct. 1988) (holding that denial of claimant's petition for unemployment compensation benefits, based solely upon claimant's status as full-time student, without any further investigation into claimant's work eligibility, was erroneous). Appellant did not testify that her availability to work was hindered, in anyway, by taking classes. There is simply no evidence in the Record to support the Department's determination that Appellant's pursuant of educational opportunities resulted in her unavailability for work.

The Department also found Appellant unavailable to work due to her testimony that she spends approximately 20 hours per week actively seeking to open a new restaurant, and the Department asserts that Appellant plans to open the new restaurant under the Employer. Thus, the Department determined that Appellant failed to meet the eligibility requirements of S.C. Code Ann. § 41-35-110(3) because she was "engaged in self-employment of a nature to promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over this period of time." S.C. Code Ann. § 41-35-110(c)(b).

Generally, a claimant that is self-employed is not "available for work" and thus may not receive unemployment compensation. Carry v. Review Bd. of Ind. Employment Sec. Div., 505 N.E.2d 111, 112 (Ind. Ct. App. 1987); see also O'Brien v. Dir. of Div. of Employment Sec., 472 N.E.2d 253, 256 (Mass. 1984) ("Logically, a claimant cannot be 'available to work' within the meaning of [the statute] if the claimant is already employed by another or is self-employed."). However, Appellant cannot be considered to be self-employed by the mere action of looking for a location to open a restaurant. She has not conducted any business on behalf of the future restaurant – she is simply investigating the potential to open a new restaurant. Furthermore, there was no testimony to specify when and how she spends that time and if those time periods interfered with her ability to work. And, despite the assertion made by the Department, Appellant cannot be considered to be carrying on the business of the Employer by opening a new

restaurant. No testimony was given by Appellant or the Employer that she intended to continue Employer's business venture by opening a new restaurant.<sup>3</sup>

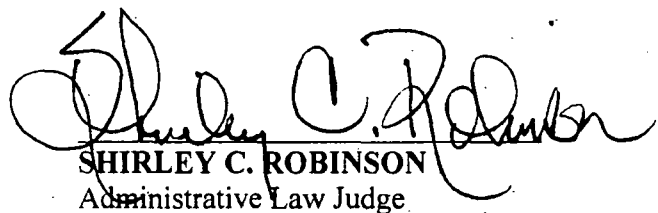
The Department cites McEachern v. S.C. Employment Security Commission, 370 S.C. 553, 635 S.E.2d 644 (Ct. App. 2006) as analogous to this case. However, I disagree. The claimant in McEachern was a corporate officer (president) and continuously worked for the non-profitable corporation in the hopes that the business would return to profitability. Here, Appellant has no corporate position in the company and there is no effort to continue operating the business.

Accordingly, the Department's decision must be reversed as the Record does not support its determination that Appellant failed to meet the availability requirements under S.C. Code Ann. § 41-35-110.

**ORDER**

**IT IS THEREFORE ORDERED** that the Department's decision is **REVERSED**.

**IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

January , 2012  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the interagency Mail Service addressed to the party(ies) or their attorney(s).  
This 12 day of January 2012  
By: Jeeben J. Henderson  
Judicial Law Clerk

<sup>3</sup> Notably, Appellant does not own any interest in Employer. The corporation has 10,000 shares of issued stock certificates: 6500 have been issued to Raymond Hicks, and 3500 have been issued to Christopher Morrow. Further, Christopher Morrow is the only registered agent for the corporation.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No.: 11-ALJ-22-0440-AP

RECEIVED  
FEB 06 2012  
SC COURT OF APPEALS

South Carolina Department of Employment and Workforce.....Appellant

v.

Kimberly M. Morrow and A Wing and a Prayer, Inc. ....Appellees

NOTICE OF APPEAL

The South Carolina Department of Employment and Workforce appeals the decision of the Honorable Shirley C. Robinson dated January 12, 2012. The Respondent-Appellant received a copy of this decision on January 17, 2012.

February 3, 2012



South Carolina Department of Employment and Workforce  
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Office of General Counsel  
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bgorski@dew.sc.gov

Other Parties of Record:

Kimberly Morrow (pro se)  
112 Captain Tom Court  
Spartanburg, SC 29306  
(864) 809-8585  
Claimant

A Wing and A Prayer, Inc.  
c/o Christopher Morrow, Registered Agent  
112 Captain Tom Court  
Spartanburg, SC 29306  
(864) 809-7431  
Employer

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Kimberly M. Morrow, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 S.C. Department of Employment and )  
 Workforce and A Wing and a Prayer, Inc., )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

Docket No. 11-ALJ-22-0440-AP

**RECORD ON APPEAL  
(Amended Cover Page)**

APPEAL FROM A DECISION OF THE  
SOUTH CAROLINA DEPARTMENT OF  
EMPLOYMENT AND WORKFORCE  
APPELLATE PANEL

Kimberly M. Morrow  
112 Captain Tom Ct.  
Spartanburg, SC 29306  
Claimant

Brenda L. Gorski, Esq.  
Legal Department – Dept. of Employment and Workforce  
P.O. Box 8597  
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Legal@dew.sc.gov  
Attorney for Respondent

A Wing and A Prayer, Inc.  
112 Captain Tom Court  
Spartanburg, SC 29306  
Employer

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Decision No: 2011-P- 1545

Appeal No: 04592-14551

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
Columbia, South Carolina

IN THE MATTER OF THE CLAIM OF:

Kimberly M. Morrow )  
112 Captain Tom Court )  
Spartanburg, SC 29306 )  
Claimant SSN: [REDACTED] )

A Wing and A Prayer, Inc. )  
112 Captain Tom Court )  
Spartanburg, SC 29306 )  
Liable Employer )

APPELLATE PANEL  
DECISION

Appellant: Claimant

The claimant appealed Appeal Tribunal Decision 2011-A-6251 to the Appellate Panel. The Appeal Tribunal held the claimant ineligible for benefits. This decision affirmed the claims adjudicator's determination.

The Appellate Panel issued its decision upon review of the record on appeal.

DECISION

Appeal Tribunal Decision 2011-A-6251 is affirmed. The claimant is ineligible for benefits effective January 30, 2011, upon finding that she fails to meet the availability requirements of the law.

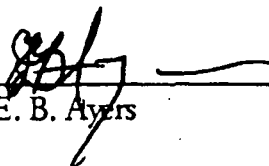
The claimant is vice-president of the subject corporation, which operated a restaurant. She was salaried as the operating manager of the restaurant, which closed in January 2011 due to a slowdown in business. The claimant asserts she is not a controlling officer in the subject corporation and is seeking other employment. She has some equipment from the former business and plans to open a new restaurant. She is searching for a location for the new business and devotes approximately twenty (20) hours each week to that venture. The claimant also attends school but states she would quit if she obtains employment. The fact-finding statement the claimant provided to the Department on February 23, 2011, shows that the decision to close the business was made by the president, vice-president, secretary, and treasurer.

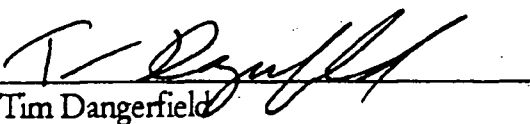
Decision No: 2011-P- 1545  
Appeal No: 04592-14551

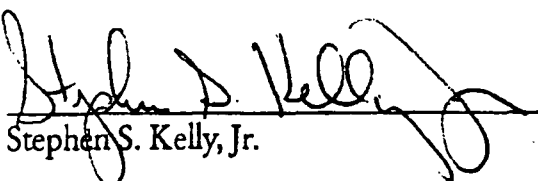
S.C. Code Ann. § 41-35-110 requires an individual to be able to work, available for work, and actively seeking work in order to be eligible for unemployment compensation. A claimant must have unrestricted exposure to the general labor market.

Although the claimant asserts she is not a controlling officer in the subject corporation, the evidence establishes that she intends to open a new business and devotes a substantial portion of her time for that purpose. Further, she attends school. Her exposure and attachment to the general labor market are restricted. Therefore, we find that she does not meet the availability requirements of the statute and is ineligible for benefits. The Appeal Tribunal decision is affirmed.

SOUTH CAROLINA DEPARTMENT OF  
EMPLOYMENT AND WORKFORCE

  
E. B. Ayers

  
Tim Dangerfield

  
Stephen S. Kelly, Jr.

Review Date: 07/19/11  
Date Mailed: 07/21/11  
Mailed By: \_\_\_\_\_

**July 21, 2011**

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
(SCDEW)  
Columbia, South Carolina

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**NOTICE OF MAILING OF APPELLATE PANEL DECISION**

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Attached is a copy of the final agency decision of SCDEW in this case. Any further appeal is to the South Carolina Administrative Law Court. To obtain judicial review of this decision, you must comply with the requirements of S.C. Code Ann. §41-35-750 and the Rules of Procedure of the Administrative Law Court. The Court may require a filing fee.

The law requires that a Petition for Judicial Review must be filed with the Court and served on all parties and SCDEW within thirty (30) days from the date of mailing of the agency's final decision (**see the mailing date above**).

Service of the Petition on SCDEW must be addressed and mailed to:

**Legal Department  
S.C. Department of Employment and Workforce  
Post Office Box 995  
Columbia, SC 29202**

SCDEW cannot advise a party on any legal matter. For legal advice or assistance in filing an appeal to the Administrative Law Court, you should consult an attorney licensed to practice in South Carolina.

Form App-115  
Rev. 4/27/11



SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION  
INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER

LOCAL OFFICE 420

EFFECTIVE DATE 01/30/11

DATE FILED 02/01/11

DATE PREPARED 02/01/11

O

KIMBERLY M MORROW  
112 CAPTAIN TOM CT

SPARTANBURG

SC 29306

POTENTIAL BENEFITS ESTABLISHED

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT 326.00

MAXIMUM TOTAL BENEFITS 8476.00

BENEFIT YEAR ENDS 01/29/12

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		BASE PERIOD QUARTERLY EARNINGS							
EMPLOYER	ACCOUNT NO.	YEAR	*QTR.	YEAR	*QTR.	YEAR	*QTR.	YEAR	*QTR.
A WING AND A PRAYER	420497	2009	04	2010	01	2010	02	2010	03
		8615.32	7384.56	7999.94	7999.94				

BASE QUARTER TOTAL

8615.32

7384.56

7999.94

7999.94

\*QTR.

1.-JAN.,FEB.,MAR. 3.-JULY,AUG.,SEPT.

2.-APR.,MAY,JUNE 4.-OCT.,NOV.,DEC.

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION  
INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER

LOCAL OFFICE 420

EFFECTIVE DATE 11/16/08

DATE FILED 11/21/08

DATE PREPARED 11/21/08

0  
KIMBERLY M MORROW  
112 CAPTAIN TOM CT

SPARTANBURG SC 29306

POTENTIAL BENEFITS ESTABLISHED

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT 326.00

MAXIMUM TOTAL BENEFITS 8476.00

BENEFIT YEAR ENDS 11/15/09

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		BASE PERIOD QUARTERLY EARNINGS							
EMPLOYER	ACCOUNT NO.	YEAR	*QTR.	YEAR	*QTR.	YEAR	*QTR.	YEAR	*QTR.
H H HUNT CORPORATION	298427	2007	03	2007	04	2008	01	2008	02
A WING AND A PRAYER	420497								
			.00		1906.88		7642.31		8681.81
			9148.26		6071.00		.00		.00

BASE QUARTER TOTAL 9148.26 7977.88 7642.31 8681.81

\*QTR.  
1.-JAN.,FEB.,MAR. 3.-JULY,AUG.,SEPT.  
2.-APR.,MAY,JUNE 4.-OCT.,NOV.,DEC.

UI-5  
B1048  
OCT 1988

SOUTH CAROLINA  
EMPLOYMENT SECURITY COMMISSION  
P.O. BOX 1477  
COLUMBIA, S. C. 29202  
OFFICIAL BUSINESS  
UCB-1048

FORWARDING SERVICE REQUESTED

KIMBERLY M MORROW  
112 CAPTAIN TOM CT

SPARTANBURG SC 29306

INFORMATION FOR CLAIMANT

This is a monetary determination of your claim for benefits based on wages paid during your Base Period. This determination shows your Base Period Employment Record. It lists your covered employer(s) that paid you wages, their account number, and the wages paid to you by quarter and year during the base period of your claim. The total amount of wages paid to you by quarter in the base period is shown beside Base Quarter Total. This determination covers only the monetary portion of your claim. Another determination will be issued that states if you are eligible to receive benefits. It will be based on the reason for separation from your most recent bona fide employer.

Under Potential Benefits Established, your Weekly Benefit Amount, Maximum Benefit Amount, and the date your Benefit Year Ends are shown.

**BASE PERIOD:** The first four of the last five completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on the face of this form, give the information to your claimstaker at the unemployment office.

**HIGH QUARTER:** The quarter in our Base Period during which wages paid to you for insured work were highest.

**WEEKLY BENEFIT AMOUNT:** The amount of benefits you may receive weekly, if unemployed and otherwise eligible, shall be one-half of the average weekly wage in the high quarter of your base period, but shall not be less than \$20.00 nor greater than the maximum weekly benefit amount as determined by the Commission on or before June 30 of each year for benefit years on or after July 1 of such current calendar year, and prior to July 1 of the succeeding calendar year as provided in Section 41-35-40 of the Law.

**MAXIMUM POTENTIAL BENEFITS:** The greatest amount of compensation that you may receive during your benefit year.

**BENEFIT YEAR:** The one (1) year period following the effective date of your Initial Claim. To establish a Benefit Year in accordance with the provisions of the Law, you must meet the following wage requirements:

1. You were paid at least \$540.00 for insured work during the high quarter of your base period;
2. You were paid at least \$900.00 for insured work during your base period;
3. The total of your base period wages for insured work equaled or exceeded one and one-half times the total of your high quarter wages.

**AVERAGE WEEKLY WAGE:** Shall be determined by dividing the high quarter wages by 13 weeks.

**REDETERMINATION RIGHTS:** You have the right to request a correction if you do not agree that this determination is correct. Your request for redetermination may be made by letter or by personal visit to the office where your claim was filed, and it should be made without delay. No change can be made on this determination after one year from the date of this notice.

**BE SURE TO NOTIFY YOUR LOCAL OFFICE ANYTIME YOUR MAILING ADDRESS CHANGES WHILE FILING A CLAIM FOR BENEFITS.**

EXAMPLE OF COMPUTATION OF BENEFITS:

High Quarter Wages	\$1040.00
Base Period Wages	\$3482.00
Average Weekly Wage	\$1040.00 divided by 13 = \$ 80.00
Weekly Benefit Amount	80.00 divided by 2 = \$ 40.00

Maximum Potential Benefits:

Your maximum total benefit amount for this benefit year is the lesser of:

1. Twenty-six (26) times your Weekly Benefit Amount, or
2. One-third (1/3) of your total Base Period Wages as shown on this determination.  
(1)  $26 \times \$40.00 = \$1040.00$  (2)  $1/3$  of  $\$3482.00 = \$1154.00$ .

Maximum Benefits would be \$1040.00 since that amount is less than \$1154.00.

# South Carolina Employment Security Commission OFFICER/OWNER/PARTNER FACT FINDING

PLEASE PRINT CLEARLY

BYE 1-29-12

LO# 420

Claimant's Name Kimberly M. Morrow

SSN [REDACTED]

Employer Name A WING & A PRAYER INC

Account Number 420497

Trade Name Blue Star Barbecue

Telephone Number 864-591-1350

Physical Location 1000 N PINE ST. STE 31 Spartanburg SC 29303

Mailing Address SAME

Legal Entity Type

Sole Proprietorship

Partnership

Corporation

LLC (Limited Liability Company)

LLP (Limited Liability Partnership)

① What was your position in this business?

Vice-President

A Date(s) employed?

9-7-09 to 1-23-11

B Why are you unemployed?

Business Closed

See Unemployment Comm.

② What portion of the business did you own?

1/3 %

FB 25 2011

③ What was the principal business activity? (What does the business make/sell/service/provide?)

RESTAURANT

Received Benefits Div

④ Who made the decision to end your employment?

Board of Director's Decision

Court Decree

Other (Explain fully)

Pres. Vice Pres.

Sec & Treas. Made decision to close due to slow business

⑤ Is the business presently in operation?

YES  NO

(If NO, go to 6)

A Who is performing your duties in your absence?

N/A

B Will you provide any services to the business during your period of unemployment?

YES  NO

(If YES, explain fully)

C How much time (per week) will you contribute to the operation of the business during your period of unemployment?

N/A

D Do you expect to be reemployed with the business?

YES  NO

(If YES, Answer D1 and D2)

① When \_\_\_\_\_

② In what capacity \_\_\_\_\_

South Carolina Employment Security Commission  
OFFICER/OWNER/PARTNER FACT FINDING  
Continued

Claimant's Name Kimberly Moore

SSN [REDACTED]

⑥ Since this business is no longer in operation, please answer the following questions concerning the closing of the business.

A. Date business closed 1/23/11

B. What caused the business to close?

- Act of Nature
- Board of Directors' Decision
- Bankruptcy
- Court Decree
- Business Sold
- Other (Explain fully)

BUSINESS WAS SHUT. NO REVENUE

C. What happened to the assets upon closure? (Explain fully) Storage -

D. Are there any plans for the business to reopen?  YES  NO (If YES, Answer D1 and D2)

① Expected date to reopen None Set at the time (ASAP)

② Are you involved in any efforts to reopen the business?  YES  NO (If YES, Answer D3 and D4)

③ What are you doing specifically to reopen the business? (Explain fully) Look for Locations daily to down size. (20 hours a week)

④ How much time (per week) will you contribute to the operation of the business during your period of unemployment? None Business is closed

E. Do you expect to be reemployed with the business?  YES  NO (If YES, Answer E1 and E2)

① Anticipated date of reemployment ASAP

② In what capacity Vice President

⑦ Are you able to work and actively seeking full time work?  YES  NO (If NO, Explain fully)

CERTIFICATION I affirm that my responses on this form and all documents furnished to establish my claim for unemployment benefits are true and accurate

Claimant's Signature [Signature]

Date 2/23/11

Agency Representative's Signature [Signature]

Date 2/23/11



**Notice of Appeal to Appeal Tribunal**

Claimant's Name: KIMBERLY M MORROW Social Security Number: [REDACTED]  
Claimant's Address: 112 CAPTAIN TOM CT SPARTANBURG SC 29306  
Date of Birth: 1/27/1975 Date of Initial Claim: 1/30/2011 Telephone: 864-809-8586  
(Month/Day/Year) (Month/Day/Year)  
Employer's Name: A WING AND A PRAYER Telephone: 864-809-8586  
Employer's Address: 1000 N PINE STREET STE 31 SPARTANBURG SC 29303

On 3/16/2011 I received a claims examiner's determination mailed 3/11/2011 from  
(Date) (Date)

which I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:  
I WAS CONSIDERED AN HOURLY EMPLOYEE WITH THE RESTAURANT JUST LIKE ANY ONE ELSE. EVEN  
THOUGH I WAS NAMED VICE- PRESIDENT OF THE COMPANY I WAS STILL PAID A SALARY JUST LIKE ALL  
OF OUR OTHER EMPLOYEES. I FEEL THAT I HAVE BEEN DISQUALIFIED UNFAIRLY B/C I PAID OUT THE  
PROPER AMOUNT OF TAXES ON MYSELF. I NEVER RECEIVED ANY BONUS AND I WANT MY CLAIM  
REVIEWED AGAIN.

**SC Employment Comm.**

**MAR 21 2011**

If appeal is untimely, state the reason: Received Benefits Div

I know that I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal's or Appellate Panel's decision, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks that I have claimed timely.

(Claimant's Initials)

Does claimant need an interpreter?  YES  NO What language/dialect? \_\_\_\_\_ Claimant is  Deaf  Mute  
(If it appears necessary to subpoena witnesses or documents, the Workforce Center representative should use Form 107 and attach them to this form at the time of transmittal to the Central Office.)

SUBPOENA  YES  NO

Appellant: KIMBERLY MORROW  
Signed By:   
Title: CLAIMANT Date: 3/16/2011

Date Determination Delivered  
by Workforce Center: \_\_\_\_\_  
(Date)

Signed: \_\_\_\_\_  
(Workforce Center Representative)

Filed at: SPARTANBURG 420 Date: 3 16 20 11  
(Workforce Center Name and Number) (Month) (Day) (Year)

Received By: FRANCES REEVES  
(Workforce Center Representative)

**SC Employment Comm**

**MAR 21 2011**

Received Benefits Div.

9:03 AM  
03/17/11

Blue Star BBQ  
Payroll Summary  
September 2009 through January 2011

SS

*Pay info time was  
Business was  
open until  
we closed*

	Hours	Rates	Sep '09 - Jan 11	TOTAL Hours
<b>Employee Wages, Taxes and Adjustments</b>				
Gross Pay				
Salary			43,076.60	
<b>Total Gross Pay</b>			<b>43,076.60</b>	
<b>Adjusted Gross Pay</b>			<b>43,076.60</b>	
<b>Taxes Withheld</b>				
Federal Withholding			-474.00	
Medicare Employee			-624.81	
Social Security Employee			-2,621.51	
SC - Withholding			-1,499.40	
<b>Total Taxes Withheld</b>			<b>-5,219.52</b>	
<b>Net Pay</b>			<b>37,857.08</b>	
<b>Employer Taxes and Contributions</b>				
Federal Unemployment			131.89	
Medicare Company			624.81	
Social Security Company			2,670.74	
SC - Unemployment Company			281.74	
SC - Contingency Assessment			9.88	
<b>Total Employer Taxes and Contributions</b>			<b>3,698.66</b>	

SC Employee Comm.

MAR 21 2011

Received Benefits Div.

9:03 AM

03/17/11

**Blue Star BBQ**  
**Payroll Summary**  
September 2009 through January 2011

	TOTAL	
	Rate	Sep '09 - Jan 11
<b>Employee Wages, Taxes and Adjustments</b>		
<b>Gross Pay</b>		
Salary		43,078.60
<b>Total Gross Pay</b>		<u>43,078.60</u>
<b>Adjusted Gross Pay</b>		43,078.60
<b>Taxes Withheld</b>		
Federal Withholding		-474.00
Medicare Employee		-624.61
Social Security Employee		-2,621.51
SC - Withholding		-1,499.40
<b>Total Taxes Withheld</b>		<u>-5,219.52</u>
<b>Net Pay</b>		<u>37,857.08</u>
<b>Employer Taxes and Contributions</b>		
Federal Unemployment		131.69
Medicare Company		624.61
Social Security Company		2,670.74
SC - Unemployment Company		261.74
SC - Contingency Assessment		9.88
<b>Total Employer Taxes and Contributions</b>		<u>3,698.66</u>

MAR 21 2011

Received Benefits Div.

8:55 AM  
03/17/11  
Accrual Basis

**Blue Star BBQ**  
**Profit & Loss**  
September 2009 through January 2011

	Sep '09 - Jan 11	% of Income
<b>Ordinary Income/Expense</b>		
<b>Income</b>		
Fees	100.00	0.0%
Reimbursed Expenses	71.96	0.0%
<b>Sales</b>		
Food	4,540.09	0.7%
Vendor's Compensation	479.59	0.1%
Sales - Other	663,157.13	99.2%
<b>Total Sales</b>	668,176.81	100.0%
<b>Services</b>	56.20	0.0%
<b>Total Income</b>	668,404.97	100.0%
<b>Cost of Goods Sold</b>		
Beverage Cost	2,555.93	0.4%
<b>COST OF GOODS SOLD</b>		
Food Cost	301,897.05	45.2%
COST OF GOODS SOLD - Other	37.10	0.0%
<b>Total COST OF GOODS SOLD</b>	301,934.15	45.2%
<b>Total COGS</b>	304,490.08	45.6%
<b>Gross Profit</b>	363,914.89	54.4%
<b>Expense</b>		
Advertising	38,980.13	5.5%
Amortization Expense	150.00	0.0%
Bank Service Charges		
American Express Charges	636.98	0.1%
MC/Visa Charges	8,528.01	1.3%
Returned Checks	371.79	0.1%
Valutec Card Solutions	1.28	0.0%
Bank Service Charges - Other	60.53	0.0%
<b>Total Bank Service Charges</b>	9,598.59	1.4%
Cash +/-	-91.64	-0.0%
Contributions	130.86	0.0%
Dues and Subscriptions	550.00	0.1%
Equipment Purchases	128.69	0.0%
Equipment Rental	305.08	0.0%
Insurance		
Work Comp	3,674.84	0.5%
Insurance - Other	14,028.35	2.1%
<b>Total Insurance</b>	17,703.19	2.6%
Interest Expense		
Loan Interest	6,477.62	1.0%
<b>Total Interest Expense</b>	6,477.62	1.0%
Licenses and Permits	1,539.39	0.2%
Miscellaneous		
Security	325.00	0.0%
Miscellaneous - Other	14,312.48	2.1%
<b>Total Miscellaneous</b>	14,637.48	2.2%
Office Supplies		
Printing and Reproduction	1,279.30	0.2%
Office Supplies - Other	1,959.95	0.3%
<b>Total Office Supplies</b>	3,239.25	0.5%
Operating Supplies		
Catering Equipment & Supplies	38.64	0.0%
Operating Supplies - Other	4,963.42	0.7%
<b>Total Operating Supplies</b>	5,002.06	0.7%

SC Employment Comm

MAR 21 2011

Received Benefits Div

8:55 AM  
03/17/11  
Accrual Basis

Blue Star BBQ  
Profit & Loss  
September 2009 through January 2011

*Business was opened from 27*

	Sep '09 - Jan 11	% of Income
<b>Outside Services</b>		
Landscaping	130.59	0.0%
Outside Services-Trash Collect	8,805.52	1.0%
Pest Control	560.37	0.1%
Storage	570.00	0.1%
Outside Services - Other	1,165.00	0.2%
<b>Total Outside Services</b>	<b>9,231.48</b>	<b>1.4%</b>
<b>Payroll Expenses</b>	<b>267,565.68</b>	<b>40.0%</b>
<b>Postage and Delivery</b>	<b>208.32</b>	<b>0.0%</b>
<b>Professional Fees</b>		
Accounting	425.00	0.1%
Legal Fees	-1,252.50	-0.2%
<b>Total Professional Fees</b>	<b>-827.50</b>	<b>-0.1%</b>
<b>Rent</b>	<b>45,371.82</b>	<b>6.8%</b>
<b>Repairs</b>		
Building Repairs	2,162.75	0.3%
Computer Repairs	699.29	0.1%
Equipment Repairs	1,934.27	0.3%
Repairs - Other	148.47	0.0%
<b>Total Repairs</b>	<b>4,942.78</b>	<b>0.7%</b>
<b>Taxes</b>		
Federal	791.70	0.1%
Local	1,619.71	0.2%
Sales & Use Tax Adjustments	-1,024.11	-0.2%
State	-309.02	-0.0%
Taxes - Other	2,175.00	0.3%
<b>Total Taxes</b>	<b>3,253.28</b>	<b>0.5%</b>
<b>Telephone</b>	<b>5,508.90</b>	<b>0.8%</b>
<b>Travel &amp; Ent</b>		
Entertainment	2,845.43	0.4%
<b>Total Travel &amp; Ent</b>	<b>2,845.43</b>	<b>0.4%</b>
<b>Uncategorized Expenses</b>	<b>1,424.19</b>	<b>0.2%</b>
<b>Uniforms</b>	<b>859.10</b>	<b>0.1%</b>
<b>Utilities</b>		
Gas and Electric	29,289.94	4.4%
Water	2,482.29	0.4%
<b>Total Utilities</b>	<b>31,772.23</b>	<b>4.8%</b>
<b>Vehicle Expense</b>	<b>3,273.52</b>	<b>0.5%</b>
<b>Total Expense</b>	<b>471,774.03</b>	<b>70.8%</b>
<b>Net Ordinary Income</b>	<b>-107,859.14</b>	<b>-16.1%</b>
<b>Other Income/Expense</b>		
Other Income		
Other Income	3,609.03	0.5%
<b>Total Other Income</b>	<b>3,609.03</b>	<b>0.5%</b>
<b>Other Expense</b>		
Gift Cards Sold	0.00	0.0%
<b>Total Other Expense</b>	<b>0.00</b>	<b>0.0%</b>
<b>Net Other Income</b>	<b>3,609.03</b>	<b>0.5%</b>
<b>Net Income</b>	<b>-104,250.11</b>	<b>-15.6%</b>

SC Employment Comm

MAR 21 2011

Page 2

Received Benefits Div.

APP-105  
Revised 7/02SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION  
P.O. Box 995, Columbia, South Carolina 29202  
NOTICE OF HEARING BEFORE APPEAL TRIBUNALClaimant's Name: KIMBERLY M MORROW Social Security Number: [REDACTED]  
Address: 112 CAPTAIN TOM CT  
SPARTANBURG SC 29306-6914Employer's Name: A WING AND A PRAAppeal Number: 1104592 Hearing Date: 04/13/11 Hearing Time: 9:45 AM  
Month/Day/Year Hour/MinuteHearing Location: SC DEPARTMENT OF EMPLOYMENT & WORKFORCE  
440 SOUTH CHURCH ST SPARTANBURG SC 29301Before: GERALD B. TURNER**IMPORTANT: IF YOU HAVE APPEALED AND FAIL TO APPEAR WITHIN TEN (10) MINUTES AFTER THE SCHEDULED TIME FOR THE HEARING TO BEGIN, YOUR APPEAL MAY BE DISMISSED. FAILURE OF EITHER PARTY TO PARTICIPATE MAY RESULT IN YOUR INTERESTS BEING ABANDONED.**

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Commission at (803) 737-2520. AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any special needs, such as an interpreter, please contact us prior to the hearing.

**ISSUES**

<input type="checkbox"/> Voluntary Quit (for good cause)	<input type="checkbox"/> Voluntary Retirement	<input type="checkbox"/> Timeliness of Appeal
<input type="checkbox"/> Discharge (for disqualifying cause)	<input type="checkbox"/> Absence from Hearing	<input type="checkbox"/> Fraud & Overpayment
<input type="checkbox"/> Availability	<input type="checkbox"/> Overpayment	<input type="checkbox"/> Job Offer & Referral
<input checked="" type="checkbox"/> Eligibility	<input type="checkbox"/> Other _____	

**EVIDENCE:** This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge. Only documents, such as business records (for example: timesheets, employer's policies or handbook, warnings) can be considered and must be submitted with an original and two copies. The original will be returned. No testimony or evidence will be considered from witnesses who are not present.

**SUBPOENAS:** If a witness is reluctant to appear, you may apply for a subpoena through the Commission's local office or the Appeal Tribunal at (803) 737-2520.

**LEGAL REPRESENTATION:** An attorney licensed to practice in South Carolina may represent you. It is your responsibility to obtain representation prior to the hearing. Fees charged to represent claimants are limited by the Commission.

**BENEFITS:** A claimant should continue to file for benefits during the appeal process. Weeks not claimed cannot be paid, even if the claimant is held eligible.

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

MAILING DATE: 03/30/2011**SMALL CHILDREN AND PETS ARE NOT ALLOWED IN HEARINGS**

GENERAL INFORMATION ON THE S.C. EMPLOYMENT SECURITY LAW IS ON THE BACK OF THIS NOTICE.

**SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE**

**Columbia, South Carolina**

**Transcript of Testimony  
Before**

Gerald B. Turner, Administrative Hearing Officer

**Kimberly M. Morrow** ) **CLAIMANT**  
**112 Captain Tom Court** )  
**Spartanburg, SC 29306** )  
**Claimant SSN: xxx-xx-3279** )

**A Wing and A Prayer, Inc.** )  
**112 Captain Tom Court** ) **LIABLE EMPLOYEE**  
**Spartanburg, SC 29306** )

**PLACE OF HEARING:** S.C. Dept. of Employment and Workforce  
440 South Church Street  
Spartanburg, SC

**DATE OF HEARING:** April 13, 2011

**APPEARANCES:**

For Claimant: Present

For Employer: One Witness

**TESTIFYING WITNESSES**

**CLAIMANT:**

Kimberly M. Morrow

**EMPLOYER WITNESSES:**

Christopher Morrow, Treasurer

1 Before: Gerald B. Turner, Administrative Hearing Officer

2 **HEARING OFFICER'S PREAMBLE.**

3 **ALL WITNESSES SWORN.**

4 HEARING OFFICER: The Claimant appealed the determination  
5 mailed March 11, 2011, whereby the Claimant was held indefinitely ineligible for  
6 benefits effective January 30, 2011. The issue in this hearing is the Claimant's  
7 eligibility for unemployment benefits. You will be notified of a decision as soon as  
8 possible which will be mailed to your address of record, and for the record we have  
9 Kimberly M. Morrow at 112 Captain Tom Court, Spartanburg, SC 29306. Is that  
10 correct, ma'am?

11 CLAIMANT: Yes, sir.

12 HEARING OFFICER: And for A Wing and A Prayer, Inc., we have  
13 1000 North Pine Street, Suite 31, Spartanburg, SC 29303. Is that correct, Mr.  
14 Morrow?

15 EMPLOYER WITNESS: Yes, sir.

16 HEARING OFFICER: Because the issue was originally adjudicated  
17 as an eligibility issue, I will begin testimony with the Claimant. Before we  
18 proceed, are there any specific questions either of you have regarding the issue or  
19 the procedure of the hearing before we continue, Ms. Morrow?

20 CLAIMANT: No, sir.

21 HEARING OFFICER: Mr. Morrow?

22 EMPLOYER WITNESS: No, sir.

- 1 HEARING OFFICER: Then if you will kindly, Kimberly Morrow,  
2 would you state for this tribunal, ma'am, your full name and spell both your first  
3 and last name for the record, please?
- 4 CLAIMANT: Kimberly Morrow, K-I-M-B-E-R-L-Y M-  
5 O-R-R-O-W.
- 6 HEARING OFFICER: And Ms. Morrow, you were most recently  
7 employed or participated as an officer, owner, or partner in A Wing and A Prayer?
- 8 CLAIMANT: Yes, sir. I was the acting manager,  
9 basically.
- 10 HEARING OFFICER: All right.
- 11 CLAIMANT: The operating manager.
- 12 HEARING OFFICER: All right. I'm going to show you at this  
13 time, ma'am, a single-page document with a mailing date of March 11, 2011. I'd  
14 like you to take a look at the document and simply tell me if you recognize it.
- 15 CLAIMANT: Yes, sir, I do.
- 16 HEARING OFFICER: All right. Do you have any objection to me  
17 placing that document into evidence as an agency exhibit for the sole purpose of  
18 establishing that this is in fact why we're here today to address this issue? Any  
19 objection?
- 20 CLAIMANT: Other than...
- 21 HEARING OFFICER: Again, solely for the purpose of establishing  
22 that that is why we are here, not necessarily that you agree with it.
- 23 CLAIMANT: I'm sorry. No, sir.

1 HEARING OFFICER: All right. Mr. Morrow, any objections, sir?

2 EMPLOYER WITNESS: No, sir.

3 HEARING OFFICER: All right. Having no objection from either  
4 party, I will at this time place into evidence as Agency Exhibit 1 the single-page  
5 UCB-103 document with a mailing date of March 11, 2011, and Ms. Morrow, this  
6 is the document and the only document you're appealing. Is that correct?

7 CLAIMANT: Yes, sir.

8 HEARING OFFICER: All right. We have on record your dates of  
9 employment and I'd like you to confirm them if you will, September 16, 2009,  
10 through January 23, 2011. Is that correct?

11 CLAIMANT: Yes.

12 HEARING OFFICER: All right. I'm going to show you now,  
13 ma'am, a two-page document entitled Officer/Owner/Partner Fact Finding. It  
14 appears to have been signed and dated by you on February 23, 2011. Your  
15 signature is somewhat illegible as well as the entry on the Item #7. I'd like you to  
16 take a look at this two-page document. Tell me if in fact that is your fact-finding  
17 and is that your signature on the bottom of the second page?

18 CLAIMANT: Yes, sir.

19 HEARING OFFICER: All right. Before we proceed, what, if  
20 anything, was entered in Item #7 on the second page at the bottom?

21 CLAIMANT: It says are you able to work and actively  
22 seeking fulltime work. I will say I explained to her that I was able to work and that  
23 I was actively seeking, we're looking to, to open a restaurant and then I was  
24 actively seeking to find another building to downsize the current restaurant.

- 1 HEARING OFFICER: I see, okay. All right. Any objection to me  
2 entering this document into evidence?
- 3 CLAIMANT: No, sir.
- 4 HEARING OFFICER: All right. Mr. Morrow?
- 5 EMPLOYER WITNESS: No, sir.
- 6 HEARING OFFICER: Having no objection from either party, I will  
7 at this time, enter into evidence as Agency Exhibit 2 the two-page document  
8 entitled Officer/Owner/Partner Fact Finding signed, dated, and acknowledged by  
9 the Claimant February 23, 2011. All right. I'm going to show you now, ma'am, a  
10 two-page document entitled Notice of Appeal to Appeal Tribunal. This appears to  
11 have been signed and dated by you on March 16, 2011. Was this in fact your  
12 appeal document and is that your signature at the bottom of the page?
- 13 CLAIMANT: Yes, sir.
- 14 HEARING OFFICER: All right. Any objection to its submission?
- 15 CLAIMANT: No, sir.
- 16 HEARING OFFICER: Mr. Morrow?
- 17 EMPLOYER WITNESS: No, sir.
- 18 HEARING OFFICER: Having no objection from either party, I will  
19 at this time enter into evidence two pages of documentation collectively as Agency  
20 Exhibit 3 reflecting the Claimant's Notice of Appeal to Appeal Tribunal, signed,  
21 dated, and acknowledged by the Claimant March 16, 2011. All right. If you  
22 would at this time, Ms. Morrow, describe for this tribunal the facts and  
23 circumstances surrounding your present situation or I should say your situation  
24 from the time your business closed until now. What's going on?

- 1 CLAIMANT: Basically, I just feel like I was disqualified  
2 unfairly because I was a paid salary employee as well as all my other employees.  
3 On my determination letter that I got from unemployment, it basically states that I  
4 was unem..., that I was, I was basically terminated at fault of my own where my  
5 employees were not terminated at fault of their own.
- 6 HEARING OFFICER: Are you referring to the document that has  
7 been entered into evidence as Agency Exhibit 1?
- 8 CLAIMANT: Yes, sir.
- 9 HEARING OFFICER: All right. That document reflects that you  
10 are, there's two elements. It's either you're ineligible or disqualified. You've not  
11 been disqualified. You've been found ineligible. There's a difference and the  
12 reason you were found ineligible is as stated on the document, as an officer of a  
13 corporation, you have control over your unemployment insurance benefits and  
14 since those (UNCLEAR) those who were unemployed through no fault of their  
15 own, you're ineligible. It might sound rather vague and ambiguous but let me try  
16 to explain that to you. This ruling reflected in Agency Exhibit 1 simply says that  
17 as an officer of a corporation, you're ineligible for benefits because you have  
18 control over the corporate assets, income, distribution, etc. So what I'd like you to  
19 tell me now is what is the status of your business now?
- 20 CLAIMANT: We're closed.
- 21 HEARING OFFICER: All right, and how long have you been  
22 closed?
- 23 CLAIMANT: Since January 23<sup>rd</sup>.
- 24 HEARING OFFICER: And are you in the process of seeking to re-  
25 open your business?
- 26 CLAIMANT: Not A Wing and A Prayer because...

- 1 HEARING OFFICER: All right.
- 2 CLAIMANT: Can he talk?
- 3 HEARING OFFICER: Take your time, take your time.
- 4 CLAIMANT: Oh, sorry.
- 5 HEARING OFFICER: I'm not going to bite you.
- 6 CLAIMANT: I know. I understand.
- 7 HEARING OFFICER: All right. Take your time.
- 8 CLAIMANT: I mean the restaurant closed because we  
9 were out of money.
- 10 HEARING OFFICER: Okay.
- 11 CLAIMANT: And I just feel like because like I paid into  
12 the system and I paid unemployment on myself and I, you know, I drew a check  
13 out of the company that I should be able to draw unemployment as well. Do you  
14 understand what I'm saying?
- 15 HEARING OFFICER: I understand. All right. What, what are you  
16 doing now to, to re-open it or you said A Wing and A Prayer is out of business?
- 17 CLAIMANT: Yeah. It's out of business because we did  
18 have partners in the business...
- 19 HEARING OFFICER: Okay.
- 20 CLAIMANT: ...and they're actually, they were majority  
21 owners. They owned 60, well, 6,500 shares where we, he owned 3,500 shares.

- 1 HEARING OFFICER: When you say he, you're referring to Mr.  
2 Morrow?
- 3 CLAIMANT: To Mr. Morrow.
- 4 HEARING OFFICER: Okay.
- 5 CLAIMANT: And I basically ran the restaurant. I was the  
6 manager, I mean I, you know, made the decisions, hire and fire and stuff like that  
7 but and I was only on paper listed as an officer to make decisions in the restaurant.  
8 You know we have P&L statements that shows, I mean we lost \$153,000 in a year  
9 and a half. We basically went in business, went in partners with these people to try  
10 to help them recoup money but in return, I think the economy is so bad that, you  
11 know, we, we continued to lose money so it was in the best interest to close.
- 12 HEARING OFFICER: Oh, okay. What are you doing now in terms  
13 of actively seeking work?
- 14 CLAIMANT: I've actually applied at several places but I  
15 mean I'm also, you know, on my free time, too, I mean I'm also looking for a  
16 smaller place, you know, a smaller restaurant to possibly downsize because we do  
17 have, you know, some of the equipment and stuff from the restaurant left and, you  
18 know, to maybe possibly open another place but...
- 19 HEARING OFFICER: All right. On your document on your fact-  
20 finding, you indicate that you are presently spending approximately 20 hours a  
21 week looking for locations to downsize?
- 22 CLAIMANT: Uh huh.
- 23 HEARING OFFICER: Yes?
- 24 CLAIMANT: Yes, sir.

- 1 HEARING OFFICER: And that would be to re-open A Wing and A  
2 Prayer or to open a new restaurant?
- 3 CLAIMANT: A new restaurant.
- 4 HEARING OFFICER: Okay, and you're seeking, you're spending  
5 approximately 20 hours a week in that effort?
- 6 CLAIMANT: Yes, sir.
- 7 HEARING OFFICER: Okay.
- 8 CLAIMANT: But I'm also spending time, you know,  
9 applying because, you know, at different jobs and I've also been going to school,  
10 too, to get my GED because that's...
- 11 HEARING OFFICER: Okay, are you going to school now?
- 12 CLAIMANT: Yes, sir, but I mean I would be willing to,  
13 you know, stop going to school if I found a fulltime job.
- 14 HEARING OFFICER: Okay. All right. I have no further questions  
15 for you, Ms. Morrow. Do you have any additional testimony to provide, ma'am,  
16 that you have not already provided?
- 17 CLAIMANT: No, sir.
- 18 HEARING OFFICER: All right. Do you have any specific  
19 questions for, oh, I'm sorry. Mr. Morrow, do you have any specific questions for  
20 Ms. Kimberly Morrow having heard her testimony?
- 21 EMPLOYER WITNESS: No, sir.
- 22 HEARING OFFICER: All right. Do you have any additional  
23 testimony to provide, sir, that has not already been provided?

- 1 EMPLOYER WITNESS: As far...
- 2 HEARING OFFICER: If you would state...
- 3 EMPLOYER WITNESS: ...I'm sorry.
- 4 HEARING OFFICER: ...for this tribunal your full name and spell  
5 both your first and last name for the record, please.
- 6 EMPLOYER WITNESS: Yes, sir. It's Christopher Morrow, C-H-R-I-  
7 S-T-O-P-H-E-R.
- 8 HEARING OFFICER: And Mr. Morrow, you were the treasurer of  
9 A Wing and A Prayer. Is that correct?
- 10 EMPLOYER WITNESS: Yes, sir.
- 11 HEARING OFFICER: All right. What testimony do you have to  
12 provide that would be relevant to this hearing?
- 13 EMPLOYER WITNESS: First, I would like to submit her, her payroll  
14 from 2009. It's dated actually September 1, 2009 through January 23<sup>rd</sup>. It's  
15 basically from her start date as September 16<sup>th</sup>. It is, well, it's shown as her start  
16 date. I just did Quickbooks. I just went from the first day of September until  
17 January 23<sup>rd</sup> of this year on the date of closing showing her total wages along with  
18 the unemployment that was paid on her.
- 19 HEARING OFFICER: All right. I'm going to show you this  
20 document, Ms. Morrow. I'm going to ask if you have any objection to its  
21 admission.
- 22 CLAIMANT: No, sir.
- 23 HEARING OFFICER: All right. Having no objection from the  
24 Claimant, I will at this time enter into evidence as Employer Exhibit 1 this single -

1 page document entitled Blue Star BBQ Payroll Summary from September 1, 2009,  
2 through January 23, 2011.

3 EMPLOYER WITNESS: Also, I have the P&L, the Profit and Loss  
4 Statement, from the same timeframe showing a total net income of negative  
5 \$113,000 five hundred fifty, \$113,552.88 showing.

6 HEARING OFFICER: Reflecting the loss that Ms. Morrow testified  
7 to during...

8 EMPLOYER WITNESS: Yes, sir, yes, sir.

9 HEARING OFFICER: ...her testimony? All right. Any objection,  
10 Ms. Morrow?

11 CLAIMANT: I did quote in my statement \$153,000 and  
12 it's \$113,000. I apologize.

13 HEARING OFFICER: All right.

14 EMPLOYER WITNESS: But there was a...

15 HEARING OFFICER: Well, let the record reflect that this  
16 discrepancy is rather insignificant. All right?

17 CLAIMANT: Okay.

18 HEARING OFFICER: And any objection to its submission?

19 CLAIMANT: No, sir.

20 HEARING OFFICER: Having no objection from the Claimant, I  
21 will at this time enter into evidence two pages of documentation collectively as  
22 Employer Exhibit 2 reflecting the profit and loss statement of Blue Star BBQ and

1 before we proceed, I'm going to infer that Blue Star BBQ is one in the same as A  
2 Wing and A Prayer?

3 CLAIMANT: Yes, sir.

4 EMPLOYER WITNESS: Yes, sir. Blue Star BBQ is the dba name for  
5 A Wing and A Prayer, Inc.

6 HEARING OFFICER: All right. This two-page document, again,  
7 the profit and loss statement will be entered into evidence as Employer Exhibit 2.  
8 All right, Mr. Morrow, anything else, sir?

9 EMPLOYER WITNESS: That's all the evidence that I wanted to  
10 submit. The explanation of it is the fact that we did go into business with them.  
11 The stock and I will have to make a copy of this in order, I don't have a copy of  
12 this to give you. We could make a copy before we leave. On paper, she was listed  
13 as the vice president on paper as an actual owner of the company for the stocks that  
14 were shown, Raymond Hicks, which was my partner, owned 6,500 of 10,000  
15 shares and as you see, the, that I am the sole owner of 3,500 of the remaining  
16 10,000 shares.

17 HEARING OFFICER: So there's only 10,000 shares?

18 EMPLOYER WITNESS: There's only 10,000 shares. Raymond  
19 Hicks is the owner of 3,500. I am the owner of 6,500 so I am...

20 HEARING OFFICER: So essentially, those documents and your  
21 testimony reflect that Ms. Kimberly Morrow was a paper executive?

22 EMPLOYER WITNESS: Yes, sir. She was not an owner. I was an  
23 owner of the company. I conferred with my partner, him being the majority owner,  
24 and having basically a two to one vote in the, in the decisions of the restaurant.  
25 His two to one vote outweighed me in the closing of the restaurant due to the fact  
26 that of the losses we incurred during the timeframe that we were in business with  
27 them.

1 HEARING OFFICER: All right.

2 EMPLOYER WITNESS: And I can, I can before I leave here, we  
3 could make copies of both of these stock certificates showing the shares.

4 HEARING OFFICER: All right. Let the record reflect that two  
5 pages will be entered into evidence at this time as Employer Exhibit 3 reflecting  
6 the shares of the two controlling parties of A Wing and A Prayer, Inc. reflecting a  
7 total of 10,000 shares and that was the entire, that was the sum and substance of  
8 the shares for this (UNCLEAR)?

9 EMPLOYER WITNESS: Yes, sir.

10 HEARING OFFICER: All right. All right. Any additional  
11 testimony or documentation, Mr. Morrow?

12 EMPLOYER WITNESS: That's all the documentation. I just have to  
13 reiterate the fact that, that Mr. Hicks, who was the controlling partner, made the  
14 decision for the closing of the restaurant, that Kimberly really has no say so in that  
15 decision. She was only the operating manager and at the time was on paper as the  
16 vice president just for paperwork at the corporation, to file with the Secretary of  
17 State. The losses of \$113,000 and change over that timeframe exhausted any  
18 monies that we had to stay in business.

19 HEARING OFFICER: Also noted for the record. Any additional  
20 testimony, sir?

21 EMPLOYER WITNESS: No.

22 HEARING OFFICER: Any questions for Mr. Morrow, Ms.  
23 Morrow?

24 CLAIMANT: No.

- 1 HEARING OFFICER: Having no further inquiry or testimony by
- 2 this tribunal, I'm going to declare this hearing closed at this time.
- 3 **HEARING CLOSED.**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF: RICHLAND )

This is to certify that the above is a true and correct transcript of recorded testimony transcribed to the best of my ability.

\_\_\_\_\_  
Judy Hornsby

SWORN to before me this the

\_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_

1 UCB-103  
REV. May 2007

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION  
P.O. BOX 995, COLUMBIA, S.C. 29202

1 KIMBERLY M MORROW

DATE OF THIS NOTICE 03/10/11

1 112 CAPTAIN TOM CT

1 SPARTANBURG SC 29306

CLAIMANT'S NAME				SOCIAL SECURITY NUMBER	EFFECTIVE DATE	DISQUALIFICATION ENDS		
KIMBERLY M MORROW				[REDACTED]	01/30/11	INDEF		
L.O. NO.	TYPE	CATEGORY	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS	
420	C	01	\$ 326.00	\$ 8476.00	\$ 0.00	\$ 8476.00	01/29/12	

1 DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

1  You are eligible for benefits from the above effective date.

1  You have been disqualified from receiving benefits or have been found to be ineligible for benefits for the following reason(s).

1 AS AN OFFICER OF A CORPORATION, YOU HAVE CONTROL OVER YOUR UNEMPLOYMENT INSURANCE BENEFITS.  
1 SINCE UNEMPLOYMENT INSURANCE BENEFITS ARE MEANT FOR THOSE WHO ARE UNEMPLOYED THROUGH NO FAULT OF  
1 THEIR OWN, YOU ARE INELIGIBLE FOR BENEFITS UNDER THE SOUTH CAROLINA CODE. YOU ARE INELIGIBLE FOR  
1 BENEFITS BEGINNING 01/30/11.

EXHIBIT *119*

A#: *1*

FILE NO: *110451R*

1 \_\_\_\_\_ LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

1 MAILING DATE 03/11/2011

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE. IF THE TENTH DAY FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY. YOUR APPEAL MAY BE FILED IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE, OR BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 995, COLUMBIA, SOUTH CAROLINA 29202. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE.

# South Carolina Employment Security Commission OFFICER/OWNER/PARTNER FACT FINDING

PLEASE PRINT CLEARLY

BYE 1-29-12 LO# 420

Claimant's Name Kimberly M Morrow SSN [REDACTED]

Employer Name A Wing & A Prayer Inc Account Number 420497

Trade Name Blue Star Barbecue Telephone Number 864-591-1350

Physical Location 1000 N PINE St. Ste 31 Spartanburg SC 29303

Mailing Address SAME

Legal Entity Type  
 Sole Proprietorship  
 LLC (Limited Liability Company)  
 Partnership  
 LLP (Limited Liability Partnership)  
 Corporation

① What was your position in this business? Vice-President

A Date(s) employed? 9-7-09 to 1-23-11

B Why are you unemployed? Business Closed SEE UNEMP. COMM.

② What portion of the business did you own? 1/3 % EB 25 2011

③ What was the principal business activity? (What does the business make/sell/service/provide?)  
RESTAURANT Received Benefits Div

④ Who made the decision to end your employment?  
 Board of Director's Decision  
 Court Decree  
 Other (Explain fully) Pres. Vice Pres. Sec. & Treas. Made decision to close due to slow business

⑤ Is the business presently in operation?  YES  NO (If NO, go to 6)

A Who is performing your duties in your absence? N/A.

B Will you provide any services to the business during your period of unemployment?  YES  NO (If YES, explain fully)

C How much time (per week) will you contribute to the operation of the business during your period of unemployment?  
N/A

D Do you expect to be reemployed with the business?  YES  NO (If YES, Answer D1 and D2)

① When \_\_\_\_\_ ② In what capacity \_\_\_\_\_

South Carolina Employment Security Commission  
OFFICER/OWNER/PARTNER FACT FINDING  
Continued

Claimant's Name Kimberly Morrison

SSN [REDACTED]

ⓐ Since this business is no longer in operation, please answer the following questions concerning the closing of the business.

A Date business closed 1/23/11

B. What caused the business to close ?

- Act of Nature
- Board of Directors' Decision
- Bankruptcy
- Court Decree
- Business Sold
- Other (Explain fully) Business was slow. NO revenue

EXHIBIT 289  
A#: 2  
FILE NO: 1104592

C. What happened to the assets upon closure ? (Explain fully) Storage -

D. Are there any plans for the business to reopen ?  YES  NO (If YES, Answer D1 and D2)

① Expected date to reopen None Set at the time (ASAP)

② Are you involved in any efforts to reopen the business ?  YES  NO (If YES, Answer D3 and D4)

③ What are you doing specifically to reopen the business ? (Explain fully) Look for Locations daily to down size. (20 hours a week)

④ How much time (per week) will you contribute to the operation of the business during your period of unemployment ? None Business is closed

E Do you expect to be reemployed with the business ?  YES  NO (If YES, Answer E1 and E2)

① Anticipated date of reemployment ASAP

② In what capacity Vice-President

ⓑ Are you able to work and actively seeking full time work?  YES  NO (If NO, Explain fully)

CERTIFICATION I affirm that my responses on this form and all documents furnished to establish my claim for unemployment benefits are true and accurate

Claimant's Signature [Signature]

Date 2/3/11

Agency Representative's Signature [Signature]

Date 2/3/11

*[Handwritten signature]*

**Notice of Appeal to Appeal Tribunal**

Claimant's Name: KIMBERLY M MORROW Social Security Number: [REDACTED]

Claimant's Address: 112 CAPTAIN TOM CT SPARTANBURG SC 29306

Date of Birth: 1/27/1975 Date of Initial Claim: 1/30/2011 Telephone: 864-809-8586  
(Month/Day/Year) (Month/Day/Year)

Employer's Name: A WING AND A PRAYER Telephone: 864-809-8586

Employer's Address: 1000 N PINE STREET STE 31 SPARTANBURG SC 29303

On 3/16/2011 I received a claims examiner's determination mailed 3/11/2011 from  
(Date) (Date)

which I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:  
I WAS CONSIDERED AN HOURLY EMPLOYEE WITH THE RESTAURANT JUST LIKE ANY ONE ELSE. EVEN  
THOUGH I WAS NAMED VICE- PRESIDENT OF THE COMPANY I WAS STILL PAID A SALARY JUST LIKE ALL  
OF OUR OTHER EMPLOYEES. I FEEL THAT I HAVE BEEN DISQUALIFIED UNFAIRLY B/C I PAID OUT THE  
PROPER AMOUNT OF TAXES ON MYSELF. I NEVER RECEIVED ANY BONUS AND I WANT MY CLAIM  
REVIEWED AGAIN.

**SC Employment Comm.**

**MAR 21 2011**

EXHIBIT

A#: 3

FILE NO: 1104592

If appeal is untimely, state the reason: Received Benefits Div

I know that I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal's or Appellate Panel's decision, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks that I have claimed timely.

*[Handwritten initials]*  
(Claimant's Initials)

Does claimant need an interpreter?  YES  NO What language/dialect? \_\_\_\_\_ Claimant is  Deaf  Mute  
(If it appears necessary to subpoena witnesses or documents, the Workforce Center representative should use Form 107 and attach them to this form at the time of transmittal to the Central Office.)

SUBPOENA  YES  NO

Appellant: KIMBERLY MORROW

Signed By: *[Handwritten Signature]*

Title: CLAIMANT Date: 3/16/2011

Date Determination Delivered  
by Workforce Center: \_\_\_\_\_  
(Date)

Signed: \_\_\_\_\_  
(Workforce Center Representative)

Filed at: SPARTANBURG 420 Date: 3 16 20 11  
(Workforce Center Name and Number) (Month) (Day) (Year)

Received By: FRANCES REEVES  
(Workforce Center Representative)

**SC Employment Comm**

**MAR 21 2011**

**Received Benefits Div.**

8:20 AM

04/13/11

**Blue Star BBQ**  
**Payroll Summary**  
 September 1, 2009 through January 23, 2011

		Morrow, Kimberly M.	
	Hours	Rate	Sep 1, '09 - Jan 23, 11
<b>Employee Wages, Taxes and Adjustments</b>			
Gross Pay			
Salary			42,461.22
<b>Total Gross Pay</b>			<u>42,461.22</u>
<b>Adjusted Gross Pay</b>			42,461.22
<b>Taxes Withheld</b>			
Federal Withholding			-456.00
Medicare Employee			-615.69
Social Security Employee			-2,595.67
SC - Withholding			-1,477.98
<b>Total Taxes Withheld</b>			<u>-5,145.34</u>
<b>Net Pay</b>			<u><u>37,315.88</u></u>
<b>Employer Taxes and Contributions</b>			
Federal Unemployment			126.77
Medicare Company			615.69
Social Security Company			2,632.59
SC - Unemployment Company			251.95
SC - Contingency Assessment			9.51
<b>Total Employer Taxes and Contributions</b>			<u><u>3,636.51</u></u>

1199  
 EXHIBIT  
 E#1  
 FILE NO: 1104592

8:07 AM  
04/13/11  
Accrual Basis

**Blue Star BBQ**  
**Profit & Loss**  
September 1, 2009 through January 23, 2011

	Sep 1, '09 - Jan 23, 11	% of Income
<b>Ordinary Income/Expense</b>		
<b>Income</b>		
Fees	100.00	0.0%
Reimbursed Expenses	71.96	0.0%
<b>Sales</b>		
Food	4,540.09	0.7%
Vendor's Compensation	479.59	0.1%
Sales - Other	648,317.75	99.2%
<b>Total Sales</b>	653,337.43	100.0%
<b>Services</b>	56.20	0.0%
<b>Total Income</b>	653,565.59	100.0%
<b>Cost of Goods Sold</b>		
Beverage Cost	2,353.83	0.4%
<b>COST OF GOODS SOLD</b>		
Food Cost	299,679.55	45.9%
COST OF GOODS SOLD - Other	37.10	0.0%
<b>Total COST OF GOODS SOLD</b>	299,716.65	45.9%
<b>Total COGS</b>	302,070.48	46.2%
<b>Gross Profit</b>	351,495.11	53.8%
<b>Expense</b>		
Advertising	36,980.13	5.7%
Amortization Expense	150.00	0.0%
<b>Bank Service Charges</b>		
American Express Charges	636.98	0.1%
MC/Visa Charges	8,528.01	1.3%
Returned Checks	371.79	0.1%
Valutec Card Solutions	1.28	0.0%
Bank Service Charges - Other	60.53	0.0%
<b>Total Bank Service Charges</b>	9,598.59	1.5%
Cash +/-	-95.55	-0.0%
Contributions	130.86	0.0%
Dues and Subscriptions	550.00	0.1%
Equipment Purchases	126.69	0.0%
Equipment Rental	305.08	0.0%
<b>Insurance</b>		
Work Comp	3,674.84	0.6%
Insurance - Other	14,028.35	2.1%
<b>Total Insurance</b>	17,703.19	2.7%
<b>Interest Expense</b>		
Loan Interest	6,477.62	1.0%
<b>Total Interest Expense</b>	6,477.62	1.0%
Licenses and Permits	1,539.39	0.2%
<b>Miscellaneous</b>		
Security	325.00	0.0%
Miscellaneous - Other	14,142.47	2.2%
<b>Total Miscellaneous</b>	14,467.47	2.2%
<b>Office Supplies</b>		
Printing and Reproduction	1,279.30	0.2%
Office Supplies - Other	1,921.45	0.3%
<b>Total Office Supplies</b>	3,200.75	0.5%
<b>Operating Supplies</b>		
Catering Equipment & Supplies	38.64	0.0%
Operating Supplies - Other	4,806.04	0.7%
<b>Total Operating Supplies</b>	4,844.68	0.7%
<b>Outside Services</b>		

2/29  
 EXHIBIT  
 E# 2  
 FILE NO: 1129533

8:07 AM  
04/13/11  
Accrual Basis

**Blue Star BBQ**  
**Profit & Loss**  
September 1, 2009 through January 23, 2011

	Sep 1, '09 - Jan 23, 11	% of Income
Landscaping	130.59	0.0%
Outside Services-Trash Collecti	6,805.52	1.0%
Pest Control	560.37	0.1%
Storage	570.00	0.1%
Outside Services - Other	1,165.00	0.2%
<b>Total Outside Services</b>	<b>9,231.48</b>	<b>1.4%</b>
Payroll Expenses	265,203.93	40.6%
Postage and Delivery	206.32	0.0%
Professional Fees		
Accounting	425.00	0.1%
Legal Fees	-1,252.50	-0.2%
<b>Total Professional Fees</b>	<b>-827.50</b>	<b>-0.1%</b>
Rent	45,371.92	6.9%
Repairs		
Building Repairs	2,162.75	0.3%
Computer Repairs	699.29	0.1%
Equipment Repairs	1,934.27	0.3%
Repairs - Other	146.47	0.0%
<b>Total Repairs</b>	<b>4,942.78</b>	<b>0.8%</b>
Taxes		
Federal	791.70	0.1%
Local	1,619.71	0.2%
Sales & Use Tax Adjustments	-1,024.11	-0.2%
State	-309.02	-0.0%
Taxes - Other	2,175.00	0.3%
<b>Total Taxes</b>	<b>3,253.28</b>	<b>0.5%</b>
Telephone	5,506.90	0.8%
Travel & Ent		
Entertainment	2,845.43	0.4%
<b>Total Travel &amp; Ent</b>	<b>2,845.43</b>	<b>0.4%</b>
Uncategorized Expenses	1,424.19	0.2%
Uniforms	859.10	0.1%
Utilities		
Gas and Electric	28,924.45	4.4%
Water	2,482.29	0.4%
<b>Total Utilities</b>	<b>31,406.74</b>	<b>4.8%</b>
Vehicle Expense	3,253.55	0.5%
<b>Total Expense</b>	<b>468,657.02</b>	<b>71.7%</b>
<b>Net Ordinary Income</b>	<b>-117,161.91</b>	<b>-17.9%</b>
Other Income/Expense		
Other Income		
Other Income	3,609.03	0.6%
<b>Total Other Income</b>	<b>3,609.03</b>	<b>0.6%</b>
Other Expense		
Gift Cards Sold	0.00	0.0%
<b>Total Other Expense</b>	<b>0.00</b>	<b>0.0%</b>
<b>Net Other Income</b>	<b>3,609.03</b>	<b>0.6%</b>
<b>Net Income</b>	<b>-113,552.88</b>	<b>-17.4%</b>

219 EXHIBIT  
E# 3  
FILE NO: 104592

NUMBER  
0003



SHARES  
3500

**A Wing and A Prayer, Inc.**  
A SOUTH CAROLINA CORPORATION

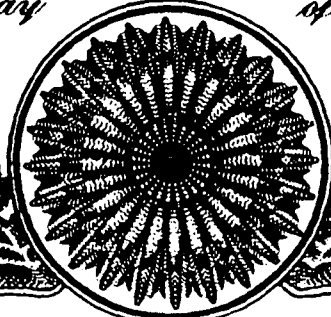
TOTAL AUTHORIZED SHARES 10,000

This Certifies that Christopher Morrow is the  
registered holder of 3500 - Three thousand Five Hundred Shares

*transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.*

*In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 8 day of September A.D. 2009*

*Raymond D. Rich*  
Secretary



\_\_\_\_\_  
President

NUMBER  
0001



SHARES  
6,500

**A Wing and A Prayer, Inc.**  
A SOUTH CAROLINA CORPORATION

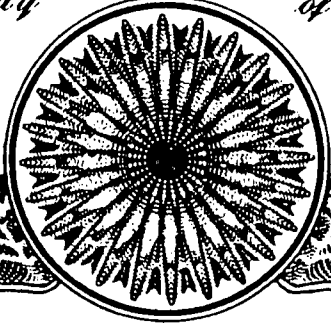
TOTAL AUTHORIZED SHARES 10,000

**This Certifies that** Raymond D. Hicks *is the*  
*registered holder of* Six Thousand Five Hundred (6,500) *Shares*

*transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.*

*In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed*  
*this* 16th *day* of February, 2005 A. D.

Secretary



President

Appeal No: 1104592

DECISION NO: 2011-A-6251

SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT AND WORKFORCE

**DECISION OF APPEAL TRIBUNAL**

Hearing Date: April 13, 2011

KIMBERLY M. MORROW  
112 CAPTAIN TOM CT  
SPARTANBURG, SC 29306-6914

)  
)  
)  
)

**CLAIMANT**

A WING AND A PRAYER INC  
112 CAPTAIN TOM CT  
SPARTANBURG, SC 29306

)  
)  
)  
)

**EMPLOYER**

APPELLANT: Claimant

SS NO: 

APPEARANCES

FOR THE Present  
CLAIMANT:

FOR THE Present  
EMPLOYER: 1 Witness

FINDINGS OF FACT

The issue in this case is whether the claimant meets the eligibility requirements of the law.

The claimant appealed the determination mailed March 11, 2011, which held the claimant ineligible from receiving benefits, effective January 30, 2011, upon a finding she fails to meet the eligibility requirements of the law.

The claimant contends that she was an officer of the then employing unit on paper only and had no shares or controlling interest in the employing unit. The employing unit is no longer in business and has no plans to re-open as is. However, the claimant candidly admitted that she invests approximately twenty (20) hours per week in seeking a new location to open a new restaurant business, is actively seeking work in that arena as well as others and is presently enrolled in school. She asserts that if she finds full time employment, she would quit school.

Appeal No: 1104592

DECISION NO: 2011-A-6251

### REASONS

The South Carolina Employment Security law provides in §41-35-110 that an individual must be able, available and actively seeking work in order to be eligible for benefits for each week claimed. The claimant must also have unrestricted exposure to the labor market and be unemployed through no fault of his/her own.

In this case, the controlling factor(s) are the claimant's time spent in seeking to open a new business as well as her enrollment in school, both of which restricts her exposure to the labor market and as such, renders her ineligible for benefits under the guidelines of the law. The Tribunal hereby finds and so holds the claimant ineligible for benefits because she fails to meet the eligibility requirements of the law.


### DECISION

The Tribunal holds the claimant ineligible for benefits, effective January 30, 2011. This decision affirms the determination mailed March 11, 2011.

This will be the final decision of the Agency, unless you file an appeal to the Appellate Panel setting forth in detail the grounds for appeal within ten (10) calendar days, including weekends and holidays, from the mailing date of this decision. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period is extended to the next business day. Your appeal may be filed in person at any Workforce Center, or by mail, addressed to "Appellate Panel," Post Office Box 995, Columbia, South Carolina 29202. For additional information or assistance in filing an appeal, contact your local Workforce Center.



Gerald B. Turner  
Administrative Hearing Officer

GBT: mrt  
Decision Mailed: 04/14/11  
Mailed on the above Date By: 

04-16-11

Kimberly Michele Morrow  
112 Captain Tom Ct.  
Spartanburg, SC 29306

SSN - [REDACTED] OB-01-27-75

*Request for  
Appellate Panel  
hearing*

57

Decision No. # 2011-A-  
6251

*Appeal # 1104592*

Subject: Appeal of the Appeal Tribunal dated 04-14-11.

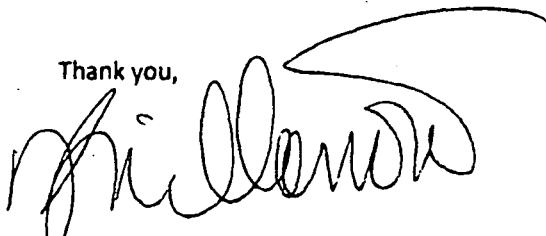
In the initial determination for claims, I was ruled ineligible for benefits because I was an officer of a corporation and was in control over my employment. In the appeal, evidence was presented to the Tribunal that even though I was "on paper" an officer of the corporation, I had no shares of stock in the company and therefore made no decisions concerning the closing of the business. Also presented was the profit and loss sheet detailing the losses incurred during my employment with the company and showed a loss of approximately \$113,000. The majority shareholder had no more money to input into the company and as a result, the restaurant had to be closed.

In the decision of the Tribunal, there was no mention of the ineligibility due to the initial reasons of me being an officer of the corporation. This indicates that I have satisfied the requirement that I was not in control over my employment status. The decision states that I am ineligible due to me looking for another location to try and open a restaurant and me being enrolled in school. I mentioned that I was spending about 20 hours per week looking for a location as well as taking GED prep classes. My enrollment in school is flexible and my search for a location was done during the evenings and weekends.

Both of these activities are done outside of my efforts in looking for employment during the day Monday through Friday and have not restricted me.

The decision of the Tribunal should be overturned due to the fact that I am satisfying the guidelines of the law in my efforts to seek employment.

Thank you,



Kimberly Michele Morrow

SC Employment Comm.

APR 20 2011

Received Benefits Div.

RECEIVED

SC DEW.UJ  
SPARTANBURG

**SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT AND WORKFORCE  
631 Hampton Street  
P.O. Box 995  
Columbia, SC 29202**

**NOTICE OF CLAIMANT APPEAL TO THE APPELLATE PANEL**

**DATE: April 26, 2011**

**APPEAL NO: 04592-14551**

**CLAIMANT:** Kimberly M. Morrow  
112 Captain Tom Court  
Spartanburg, SC 29306  
SSN [REDACTED]

**LIABLE EMPLOYER:** A Wing and a Prayer, Inc.  
1000 N. Pine St., Ste. 31  
Spartanburg, SC 29303

**SEPARATING EMPLOYER:**

The claimant in this case appealed the Appeal Tribunal Decision to the Appellate Panel for review. A copy of the appeal is attached.

The Panel will review your case as soon as possible. If a hearing is scheduled, a copy of the transcript and the hearing notice will be mailed to you at a later date.

Any benefits received by the claimant might be subject to recovery if the Appeal Tribunal Decision is reversed. The claimants must continue filing a weekly claim pending the appeal in order to receive benefits.

Legal Department  
Telephone: (803) 737-1105

cc: Claimant:  
Liable Employer:  
Separating Employer:  
Local Office: Spartanburg  
Claimant's Attorney:  
Employer's Attorney:  
Imaging  
File

EMPLOYER ACCOUNT INQUIRY

ACCOUNT NO: 420497  
PARENT : 000000

STATUS: CN DATE: 012311

5906/24/11

TRANSFER : 000000 EMPLOYER TYPE: C CHAN: 020

NAICS CODE: 722211550 AREA : 42 RATE: 175

FID : 202149085 PWE DAY

LIABILITY

-----  
BEGINNING : 0605  
ESTABLISHED : 0705  
ACCOMPLISHED: 0605  
REACTIVATED : 0000

A WING AND A PRAYER INC

TRADES AS: BLUE STAR BARBECUE

112 CAPTAIN TOM CT

CITY: SPARTANBURG

STATE: SC ZIP: 29306

KEYS: PF1 = MENU CLEAR = SOUNDEX SCREEN

## Employer Address/Phone - List

Account Number 420497

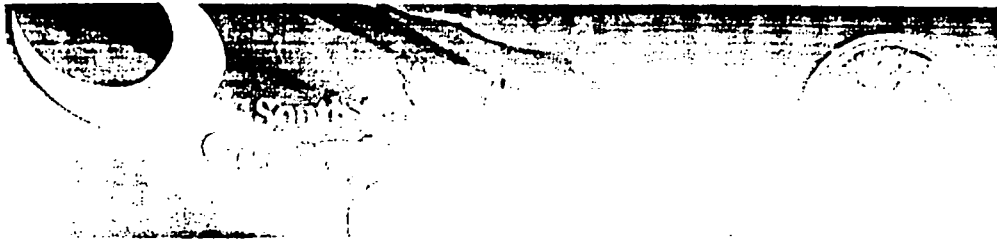
Employer Name A WING AND A PRAYER INC

FEIN 20-2149085

Trade Name BLUE STAR BARBECUE

Address Type	Phone	Fax	E-Mail	Address	City	State	Zip	Start Date	End Date
• Physical				112 CAPTAIN TOM CT	SPARTANBURG	SC	29306	03/14/2011	
Tax	864- 591- 1350			112 CAPTAIN TOM CT	SPARTANBURG	SC	29306	03/14/2011	
Tax	864- 591- 1350			443 ROLLING PINES LN	DUNCAN	SC	29334	09/14/2006	08/27/2008
Tax	864- 591- 1350			443 ROLLING PINES LN	DUNCAN	SC	29334	08/27/2008	09/30/2009
Tax	864- 591- 1350			1000 N PINE STREET STE 31	SPARTANBURG	SC	29303	09/30/2009	03/14/2011
Physical				1000 N PINE ST	SPARTANBURG	SC	29303	08/21/2009	03/14/2011

**Comments**



**WING AND A PRAYER ENTERPRISES, INC.**

*This online database was last updated on: 07/24/2011 10:57:11 AM  
View our Disclaimer*

DOMESTIC / FOREIGN: Domestic  
 STATUS: Good Standing  
 STATE OF INCORPORATION: SOUTH CAROLINA  
 ORGANIZATION: Profit

**REGISTERED AGENT INFORMATION**

REGISTERED AGENT NAME: CHRISTOPHER MORROW  
 ADDRESS: 112 CAPTAIN TOM CT  
 CITY: SPARTANBURG  
 STATE: SC  
 ZIP: 29306  
 SECOND ADDRESS:  
 FILE DATE: 10/31/2001  
 EFFECTIVE DATE: 10/31/2001  
 DISSOLVED DATE: //

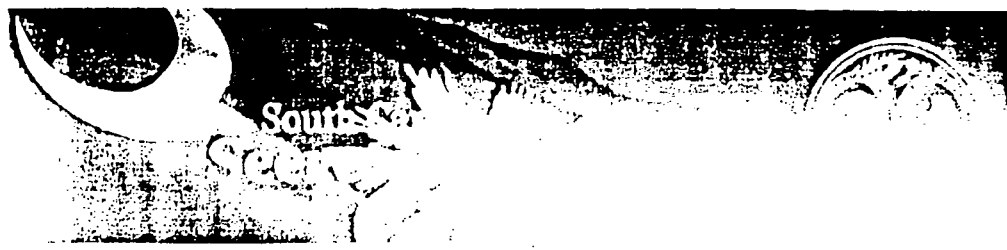
**Corporation History Records**

CODE	FILE DATE	COMMENT	Document
Amendment	02/12/2010	AMENDMENT/CHANGED AGT/ADD	Image
Amendment	12/11/2001	CORRECTION-STATUTORY CLOSE	Image
Incorporation	10/31/2001	INCORPORATION	Image

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 SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC

20201



**WING AND A PRAYER, INC. A**

*This online database was last updated on 01/18/2011 11:03:11 AM.  
See our Disclaimer.*

DOMESTIC / FOREIGN: Domestic  
 STATUS: Good Standing  
 STATE OF INCORPORATION: SOUTH CAROLINA  
 / ORGANIZATION: Profit

**REGISTERED AGENT INFORMATION**

REGISTERED AGENT NAME: DOUGLAS A HICKS  
 ADDRESS: 443 ROLLING PINES LANE  
 CITY: DUNCAN  
 STATE: SC  
 ZIP: 29334  
 SECOND ADDRESS:  
 FILE DATE: 01/19/2005  
 EFFECTIVE DATE: 01/19/2005  
 DISSOLVED DATE: //

**Corporation History Records**

CODE	FILE DATE	COMMENT	Document
Forfeiture in Error	12/03/2008	FORFEITURE IN ERROR BY DOR	
Forfeiture	11/07/2008	SCBOS Filing; ADMINISTRATIVE DISSOLUTION #2	
Incorporation	01/18/2005		

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20201

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Docket No. 11-ALJ-22-0440-AP

Kimberly Michele Morrow

Appellant, Petitioner

vs.

S.C. DEW and A Wing and A Prayer, Inc.

Respondent

Brief

THE STATE OF SOUTH CAROLINA  
In the Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT AND  
WORKFORCE APPELLATE PANEL

Kimberly M. Morrow  
112 Captain Tom Ct.  
Spartanburg, SC 29306  
864-809-8585  
cbm1497@yahoo.com  
Claimant

OCT - 4 2011

Brenda Gorski, Esq.  
Legal Department - Dept. of Employment and Workforce  
P.O. Box 8597  
Columbia, SC 29202  
803-737-2666  
legal@dew.sc.gov

A Wing and A Prayer, Inc.  
112 Captain Tom Ct.  
Spartanburg, SC 29306  
864-809-7431  
Employer

**Statements of the Issues on Appeal:**

The issues on appeal are that the SC DEW deemed me ineligible for benefits on my initial appeal on the point that I was an Officer of the corporation and therefore had control over my employment status.

The second issue is that I was deemed ineligible because I was enrolled in GED prep classes and spent time looking for a restaurant location to open.

**Statement of the Case:**

On 01-23-11, the restaurant, Blue Star BBQ, under the corporate name of A Wing and A Prayer, Inc., was closed due to losses that could not be covered.

On 02-01-11, I filed for my unemployment benefits, which had an effective date of 01-30-11 and went to the local DEW office on 02-23-11 and filed form UCB-102-CO Fact Finding form.

I received form UCB-103 dated 03-10-11, stating that I was found to be ineligible for benefits because I was an Officer of the corporation and had control over my unemployment benefits.

On 03-21-11, at my local DEW office, I filed for APP-100, Notice of Appeal to Appeal Tribunal briefly stating the nature of my appeal due to me being an Officer of the corporation. At that time, I filed copies of my payroll summary for the time of Sept. 2009 through Jan. 23, 2011 showing my Unemployment contributions and a Profit & Loss Statement for the same time frame.

The hearing date of 04-13-11, at 9:45 AM, was attended by myself, Christopher Morrow (the representative of A Wing and A Prayer, Inc.) and Gerald B. Turner as the hearing Officer. In that hearing, I presented my payroll summary, Profit & Loss statement, as well the actual shares of the corporation showing the owners, of which I was not, and the number of shares held by each.

In the decision dated 04-14-11, labeled decision no: 2011-A-6251, I appeared to have satisfied the ineligibility due to being an Officer of the corporation; however, I was found ineligible now because they deemed that I did not have "*unrestricted exposure to the labor market*", which affirmed the determination from 03-11-11.

**Arguments:****Argument 1 – Initial finding of ineligibility due to being an Officer of the corporation:**

In the initial finding of my ineligibility, the DEW stated that as an Officer of the corporation, I was essentially in control of my employment status.

Documents were filed in the Appeal Tribunal that showed my status as a paid employee of the company with UI contributions paid to the SC DEW and a Profit & Loss statement showing a net income for the company of -\$113,552.88 from the period of 09-01-09 through 01-23-11, which coincides with my employment period with the company. I was merely placed as an Officer on paper for purposes of the Corporate Charter.

The representative of the company, Christopher B. Morrow (treasurer), also testified to the losses incurred for that time period and that there was no more working capital to continue with the business.

He introduced the stock certificates for the company showing that he owned 3,500 shares and that Raymond Hicks, the financier, owned 6,500 shares of the 10,000 shares that were issued. This gave Raymond Hicks a vote of 2 to 1 over Christopher Morrow on matters pertaining to the closing of the business and on January 21, 2011, it was decided that the business was to be closed effective 01-23-2011 due to the losses incurred and the lack of positive growth resulting in Raymond Hicks not having any more capital to put into the company.

This argument had apparently satisfied the DEW's position that I was no longer deemed ineligible due to being an Officer of the company as there was no further mention of my ineligibility due to my role as an Officer.

**Argument 2 – Further finding of ineligibility due to not having "unrestricted exposure to the labor market."**

Based on my testimony, I stated that I was looking for another restaurant location to possibly open and that those efforts took up approximately 20 hours per week. The Appellate Panel stated that I devote a *substantial portion* of my time in looking for a location. Of the 168 hour in a 7 day period, this represents 12% of those hours. A 40 hour work week would only be 23.8% of that same 7 day week. There is, therefore, 108 hours left in the week that in a normal work week that would be left. The time spent in GED classes, which are flexible and I was available to be contacted should a prospective employer call, took up 16 hours, or 9.5% of the week. I find it hard to believe that my efforts could be considered as hampering me in looking for work. I have satisfied every element of the rules by turning in my efforts on my scheduled report times, 05-17-11 and 07-15-11, at the S.C. DEW local office. I cannot agree that I have not fulfilled every element of the law concerning my benefits.

The SC DEW is citing the following court ruling as their basis for finding me ineligible for benefits:

Murphy v. South Carolina Employment Security Commission No. 2731 – October 6, 1997

The ruling by the court in Murphy, the Employment Security Commission, which is the precedent that the SC DEW base their decision on, which also references the decision of

Wellington v. South Carolina Employment Security Commission that sets the standard of "available for work" to mean an "*unrestricted exposure' to the labor market.*"

Murphy set specified hours that she could work and refused to work any other hours. This standard does not apply in my case as I have never specified any hours that I could *only* work, or excluded any hours, and was available to work at any time *24 hours a day, 7 days a week*. It is the interpretation of the DEW that anyone who merely has a doctor's appointment violates the "*unrestricted exposure*" standard and should, therefore, be found ineligible for the claim week.

I would contend that the Legislature, nor the Courts, would agree that the intent of their interpretation of "*able and available*" was never meant to meet such stringent criteria and that such an interpretation would be seen as *unreasonable*. My argument on this is set in that "Substantial evidence is evidence which, considering the record as a whole, would allow *reasonable minds* to reach the conclusion that the administrative agency reached." There is "*substantial evidence*" that I not only satisfied the requirements for seeking employment by satisfying my eligibility review twice, but also went above and beyond by not only trying to establish my own employment but also trying to provide employment for others. There is nothing that states the hours that someone is to seek employment or the amount of hours invested in seeking employment. Certainly by me satisfying my eligibility reviews shows that I was actively seeking employment.

I further contend that at the time that the courts ruled on the case of Wellington in 1984, there was no access to the modes of communication that there is today. Cell phones today allow potential employers "*unrestricted access*" to anyone that needs to contact me and as such allows more freedom to be "*available*" and able to be contacted for employment anywhere, anytime.

**Conclusion:**

It is my conclusion that the SC DEW decided in error that I am ineligible and that I should be found eligible for benefits for the weeks in which I filed for claims.



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## STATEMENT OF ISSUE ON APPEAL

IS THE DECISION OF THE SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE APPELLATE PANEL FINDING THE APPELLANT INELIGIBLE FOR BENEFITS, FOR REASON SHE DID NOT MEET AVAILABILITY REQUIREMENTS, SUPPORTED BY SUBSTANTIAL EVIDENCE?

## STATEMENT OF THE CASE

Kimberly M. Morrow (hereinafter "Appellant") is Vice President and part-owner of A Wing and a Prayer, Inc., (hereinafter "Employer") which trades as Blue Star BBQ restaurant. She worked as the operations manager of Blue Star BBQ from September 16, 2009, through January 23, 2011. The corporate officers, including the Appellant, decided to close the restaurant as it was not generating sufficient revenue. Appellant filed a claim for unemployment benefits with the South Carolina Department of Employment and Workforce (hereinafter "SCDEW" or "Department") on February 1, 2011. A claims adjudicator determined that the Appellant was ineligible for benefits upon finding the Appellant was an officer of a corporation who had control over her unemployment.

The Appellant appealed the claims adjudicator's decision to the SCDEW Appeal Tribunal. After a hearing, at which sworn testimony and evidence was presented, the Tribunal determined that the claimant did not meet the eligibility requirements of the law, including South Carolina Code §§ 41-35-110 (eligibility) and 41-35-110(3) (b) (corporate officers). Next, the Appellant appealed the Tribunal's decision to the SCDEW Appellate Panel. In its Decision Number 2011-P-1545, mailed July 21, 2011, the Panel affirmed the Tribunal's decision. The Appellant seeks administrative review of Appellate Panel Decision No. 2011-P-1545.

## FACTS

The business known as A Wing and a Prayer, Inc. was incorporated in 2005, (R.51) by the Appellant, her husband, and friends. (R.25). Appellant, Kimberly Morrow was named Vice President of A Wing and a Prayer, Inc.'s in 2009, at the same time the company's trade name was changed from "Mutts BBQ" to "Blue Star BBQ"<sup>1</sup>. (R.30). In addition to her role as Vice President, the Appellant owns 1/3 percent of A Wing and A Prayer, Inc. (R.8-9, 35-36). Further, the Appellant was operations manager of Blue Star BBQ, a restaurant and catering business, September 16, 2009, through January 23, 2011. (R.8-9, 22, 35-36). She ran the restaurant and made decisions, including personnel matters, affecting the restaurant on a daily basis. (R.26). The Appellant, along with other corporate officers decided to close the restaurant, effective January 23, 2011, due to slow business. (R.8, 24, 35). A claim for unemployment benefits was filed by the Appellant on February 2, 2011. (R.4).

The Appellant initially reported, and later confirmed in sworn testimony, that she makes continuous efforts to reopen a restaurant at a new, downsized, location; and that she spends approximately 20 hours a week doing so. (R.9, 26, 27, 36). She attends school, (R.27) and has applied for other employment opportunities. (R.26, 27). A Wing and a Prayer, Inc. remains as a for-profit, South Carolina corporation with its Charter in good standing. (R.51).

The Appellant's husband testified. He asserted that he is a part owner of A Wing and a Prayer, Inc., and serves as its Treasurer. (R.30). In support of this assertion Mr. Morrow offered two unissued stock certificates, Number 0001 and Number 0003 (R. 42 and 43). There is no independent evidence that associated Mr. Morrow with the Employer, A Wing

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<sup>1</sup> See Also SCDEW records entitled "Employer Report of Change". Mutts BBQ continues operate, (See Appendix A) but the current relationship between the Appellant and "Mutts BBQ", if any, is unknown other than Mutts BBQ was a trade name for A Wing and a Prayer, Inc. at one time.

and a Prayer, Inc. The only other evidence in the record identifies "Christopher Morrow" of 112 Captain Tom Ct., Spartanburg, SC 29306 as registered agent of "Wing and a Prayer Enterprises, Inc." (R.50), which is a separate entity from the Employer herein.<sup>2</sup> Contradicting the Appellant's statements, this witness testified that the Appellant was simply a "paper" executive and not an owner of A Wing and A Prayer. (R.30). This witness maintained it was his business partner's decision to close the restaurant because it was not profitable. (R.31). Neither Douglas A. Hicks, Registered Agent for, nor Kathleen Hicks, President of A Wing and a Prayer, Inc, - the Employer herein, testified before the Tribunal or submitted evidence or statements in this matter.

A SCDEW Claims Adjudicator initially determined that the Appellant was ineligible for benefits because of her corporate officer status. (R.10, 34). The Appellant asserted that she was disqualified for unemployment benefits unfairly because she was paid a salary and paid unemployment tax on her own behalf. (R.11, 24, 25, 37). The SCDEW Appeal Tribunal also held the claimant ineligible for benefits, citing availability restrictions in addition to her role in the closure of the restaurant which resulted in her current situation. The Appellate Panel, in its Decision No. 2011-P-1545, mailed July 21, 2011, affirmed the Tribunal's conclusions and also found the Appellant ineligible for benefits.

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<sup>2</sup> See Appendix A to the Brief for Public Records Viewpoint, Page 2 of 4, *Development Corporation News*, [scacog.org/viewpoint/pdf/Julyvie03.pdf](http://scacog.org/viewpoint/pdf/Julyvie03.pdf).

## ARGUMENT

### Standard of Review

The SCDEW<sup>3</sup> is an “agency” within the meaning of the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 218, S.E.2d 365, 367 (1984). This court reviews decisions of the SCDEW Appellate Panel pursuant to the judicial review provisions of the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-380 and 1-23-600 (2010). *See Gibson*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984); *McEachern v. S.C. Employment Sec. Comm’n*, 370 S.C. 553, 557, 635 S.E.2d 644, 646-647 (Ct. App. 2006).

“The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence of questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions, are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probable and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

Under the deferential standards established by those provisions, “[t]he findings of an agency are presumed correct and will be set aside only if unsupported by substantial evidence” *Kearse v. State Health and Human Services Finance Commission*, 318 S.C. 198, 456 S.E.2d

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<sup>3</sup> The South Carolina Department of Employment and Workforce was formerly known as the Employment Security Commission.

892, 893 (1995). The burden is on the party seeking to overturn an agency decision “to prove convincingly that the agency’s decision is unsupported by the evidence.” *Waters v. South Carolina Land Resources Commission*, 321 S.C. 219, 467 S.E.2d 913, 917 (1996).

“Substantial evidence” means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Glenn v. South Carolina Dep’t of Mental Health*, 291 S.C. 279, 353 S.E.2d 284, 286 (1987). The testimony of a single witness, where credited by the administrative agency, constituted substantial evidence sufficient to support a factual finding “unless there is no reasonable probability that the fact could be as related by the witness.” *Lark v. Bi-La, Inc.*, 276 S.C. 130, 276 S.E.2d 304, 307 (1981). The possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency’s finding. *Id.* “Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.” *Merkle v. South Carolina Employment Security Commission, et al.*, 290 S.C. 459, 461, 351 S.E.2d 338, 339 (S.C. 1986), citing *Gibson*, supra.

In contrast to factual findings, statutory interpretation is a matter of law and, as such, subject to *de novo* review by the Court. See *Transportation Inc. Co. and Flagstar Corp. v. South Carolina Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 287, 289 (2010). Nevertheless, “[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” *Id.* (internal citations omitted).

The Appellant has not, and cannot, convincingly prove that the Agency’s decision is unsupported by evidence. Given the lack of error, and substantial evidence to support it, the Panel’s decision must be affirmed.

## Law/Analysis

Section 41-35-110 of the South Carolina Code (Supp. 2010) sets forth the eligibility requirements for unemployment benefits. Section 41-35-110 provides in pertinent part:

An unemployed insured worker is eligible to receive benefits with respect to a week only if the department finds he:

(3) is able to work and is available for work at his usual trade, occupation, or business or in another trade, occupation, or business for which he is qualified based on his prior training or experience; is available for this work either at a locality at which he earned wages for insured work during his base period or, if the individual has moved, to a locality where it may reasonably be expected that work suitable for him under the provisions of Section 41-35-120(3)(b) is available; and, in addition to having complied with subsection (2), is himself actively seeking work; provided, however:...

(b) a claimant may not be eligible to receive a benefit or waiting period credit if engaged in self-employment of a nature to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over this period of time; ...

(5) has separated, through no fault of his own from his most recent bona fide employer; provided, however, the term "most recent bona fide employer" means the work or employer from which the individual separated regardless of work subsequent to his separation in which he earned less than eight times his weekly benefit amount....

Whether a claimant is available for work is a question of fact for the Department. *See Wellington v. S.C. Employment Security Commission*, 281 S.C.115, 117, 314 S.E.2d 37, 39 (Ct. App. 1984). The burden is on the claimant to show that he has met the benefit eligibility conditions. *Hyman v. S.C. Employment Security Commission*, 234 S.C.369, 373, 108 S.E.2d 554, 556 (1959). This burden includes the duty to show availability for work. § 41-35-110(3); *Hyman*, 234 S.C. at 374, 108 S.E.2d at 554; *Wellington*, 281 S.C.at 117, 314 S.E.2d at 38. "Available for work" in § 41-35-110(3) has been construed to mean an "unrestricted exposure" to the labor market." *Murphy v. S.C. Employment Security Commission*, 328 S.C. 542, 544, 492 S.E.2d 625, 627 (Ct. App. 1997)(quoting *Wellington*, 281 S.C.at 117, 314 S.E.2d at

38); *see also Hyman*, 234 S.C. at 379, 108 S.E.2d at 559 (“We conclude that availability for work implies an unrestricted exposure of the applicant for benefits to the normal labor market to which he has been customarily attached.”). “This includes a duty to show availability for work and a reasonable effort to obtain employment.’ (citation omitted). “The purpose of the available requirement is to provide for a test for determining whether a claimant is actually and currently attached to the labor market.’ (citation omitted)” *McEachern*, 370 S.C. 553, 635 S.E.2d 644, 646.

In this case, there is substantial evidence in the record to support the Department’s finding that the Appellant failed to meet the availability requirements of the § 41-35-110. “A claimant may not be eligible to receive a benefit or waiting period credit if engaged in self-employment of a nature to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over this period of time” §41-35-110(3). Both in her fact-finding statement and before the Tribunal, the Appellant and her husband testified that the company, A Wing and a Prayer, Inc., had neither been dissolved, nor do they intend to dissolve it. Rather the Appellant consistently maintained that she intended to continue to work for the company in the form of a new food services venture. She testified that she spent 20 hours a week actively seeking to open a new restaurant, and made regular efforts to secure another smaller building to house the restaurant. *Cf. Carry v. Review Board of Indiana Employment Security Division*, 505 N.E.2d 111,112 (Ind. Ct. App. 1987) Holding that as a general rule, one who is self-employed is not “available for work” and these may not received unemployment compensation); *O’Brien v. Dir. Of Division of Employment Security*, 472 N.E.2d 253, 256 (Mass. 1984)(“Logically, a claimant cannot be ‘available for work’ within the meaning of § 24(b) if the claimant is already employed by another or is self-employed.”)

In addition to the time spent in furtherance of opening a new restaurant for A Wing and A Prayer, Inc., the Appellant testified that she was enrolled in GED classes. Her education pursuits took an additional 16 hours per week. Inasmuch and the Appellant was engaged in work for A Wing and a Prayer 20 hours a week and was in school another 16 hours a week, resulted in the Appellant being unavailable 36 hours out of her normal and customary work week. These activities restricted the Appellant's exposure to the normal labor market to which she was customarily attached, and limited her availability for employment. Further, the Appellant's activities demonstrate that she is not unemployed. Rather, she remains employed, but does not draw a salary at present. Although the Appellant asserts that she makes applications for employment, there is nothing in the record to substantiate the assertion.

The Commission determines whether a claimant has an 'unrestricted exposure to the labor market by looking at the facts and circumstances of each case. *Id.*" *Murphy v. S.C. Employment Security Commission*, 328 S.C. 542, 544, 492 S.E.2d 625, 626 (1997). In light of facts that: (1) the Appellant and the other owners intend to keep A Wing and a Prayer, Inc. operational by opening a new restaurant as soon as possible; (2) the Appellant works at least 20 hours a week in furtherance of this intent; it is evident that her dedication to the business restricts her exposure to the labor market; and (3) the Appellant intends to have a significant role in the new business.

The Appellant's husband, Christopher Morrow testified that he is part-owner of A Wing and a Prayer, Inc. and submitted unissued an unissued stock certificates to support his statement. Secretary of State records indicate that Mr. Morrow serves as Registered Agency for another, similarly titled entity, to-wit: "Wing and a Prayer Enterprises, Inc." (R.50). Although Mr. Morrow attempted to downplay the Appellant's impact on the restaurant

portion of the business, the credible evidence in the record indicates that the Appellant was personally and passionately invested in the operation of the restaurant, Blue Star BBQ<sup>4</sup>. Mr. Morrow's testimony, in many ways contradicts the Appellant's testimony, and there is insufficient evidence linking this witness as an Employer representative. Nonetheless, the Appellant, herself, made it clear that her intent is simply to downsize her culinary enterprise, and reopen a food business as soon as possible. The Appellant's exposure to the labor market and availability is further restricted by her school attendance.

In *McEachern*, 370 S.C.553, 635 S.E.2d 644, the Court of Appeals addressed whether the claimant in that case – a president of a corporation who ceased drawing a salary from the corporation due to a business downturn – was “unemployed” for the purposes of Section 41-27-370(1) (Supp. 2010). Despite not receiving a salary, the claimant continued to work for the corporation sixty hours a week, in an effort to restore the business to profitability.

“Although it is unfortunate that McEachern's business suffered a downturn ... there is no provision that would allow it [unemployment reserve] to subsidize individuals who chose to operate a business at a loss and continue to work while deferring a salary in order either to pay other employees or to meet other financial obligations. The unemployment statutes and regulations, as currently written are not designed to allow a corporate officer to elect to pay himself during profitable months, but then forego pay and receive benefits during less profitable months. As it would not be feasible for the Commission to sustain private businesses in this manner.”

*McEachern*, 370 S.C. 553, 635 S.E.2d 644, 648.

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<sup>4</sup> See also Public records:

Blue Star BBQ, <http://bluestarbarbeque.com/contactUs.asp>;  
 Blue Star BBQ, <http://bluestarbarbecue.com/menuPage.asp>;  
 Blue Star BBQ, <http://bluestarbarbecue.com/pics.asp>;  
 Blue Star BBQ, <http://bluestarbarbecue.com/newsletterSignup.asp>;  
 Blue Star BBQ, <http://bluestarbarbecue.com/hours/asp>;  
 Blue Star BBQ, <http://bluestarbarbecue.com/comments.asp>;  
 Blue Star BBQ, <http://bluestarbarbecue.com/apply.asp>;  
 Blue Star BBQ, <http://bluestarbarbecue.com/familyDeals.asp>;  
 Blue Star BBQ, <http://bluestarbarbecue.com/specialsKids.asp>; and  
 Blue Star BBQ, <http://bluestarbarbecue.com/poundSidesDrinks.asp>.  
 (last visited October 19, 2011) Appendix A hereto.

In construing applicable unemployment compensation legislation, the South Carolina Supreme Court concluded,

“The primary purpose of this provision would be greatly impaired, if not completely defeated, if benefits were paid to persons who became unemployed, not because the employer could no longer provide them with work, but solely because of changes in their personal circumstances. I am constrained, therefore, to conclude that in order to be entitled to benefits under the act the unemployed individual must be able to and available for the work in which he or she has been doing.”

*Mills v. South Carolina Unemployment Compensation Commission, et al.*, 204 S.C. 37, 28 S.E.2d 535, 537 (S.C. 1944). “Unemployment reserves are to be used for the benefit of persons unemployed through no fault of their own.” S.C. Code Ann. § 41-27-20 (2010). The Appellant failed to cite any authority for her assertion that she should be entitled to unemployment benefits simply because contributions were made on her behalf.

Even if this court determined that the Appellant was unemployed, it cannot be said that she was unemployed through no fault of her own. Her continued activities to reopen another restaurant on behalf of A Wing and a Prayer, Inc., demonstrates that the Appellant “is engaged in self-employment of a nature to return or promise remuneration in excess of the weekly benefit amounts [s]he would have received if otherwise unemployed over this period of time” and thus is ineligible pursuant to S.C. Code Ann. § 41-35-110(3)(b)(2010).

A review of the record as a whole reveals substantial evidence to support the Panels’ finding the Appellant did not have an “unrestricted exposure to the labor market” and therefore did not meet the availability requirements of § 41-35-110(3).

“[A] claimant may not be eligible to receive a benefit or waiting period credit if engaged in self-employment of a nature to return or promise of remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over this period of time.”

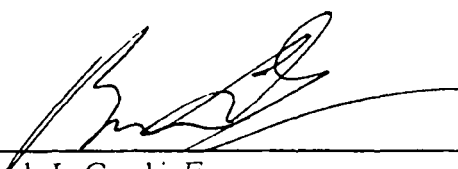
S.C. Code Ann. § 41-35-110(3)(b)(2010).

## CONCLUSION

The Panel's conclusions must be affirmed for reasons that there is substantial evidence in the record that: (a) the Appellant was not unemployed, (b) or, if the Appellant is deemed unemployed, her unemployment is directly attributable to her management and decision-making authority over the business operations, and her role in the decision to close the existing restaurant in favor of a smaller restaurant, (which is a personal circumstance brought upon the Appellant by her own actions); and (c) the Appellant did not have an "unrestricted exposure to the labor market", ( inasmuch as she works for A Wing and a Prayer 20 hours a week and attends school 16 hours a week, for a total of 36 out of her normal and customary work week.).

There is substantial evidence in the record to support the Panel's findings. Wherefore, the Respondent, South Carolina Department of Employment and Workforce, prays that this Honorable Court affirm its Decision No. 2011-P-1545.

Respectfully submitted,



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October 20, 2011  
Columbia, SC

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Kimberly M. Morrow, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 S.C. Department of Employment and )  
 Workforce and A Wing and a Prayer, Inc., )  
 )  
 Respondents. )  
 \_\_\_\_\_ )

Docket No. 11-ALJ-22-0440-AP

Respondent's Appendix A

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Attorney for Respondent



1000 N. Pine St.  
Spartanburg, S.C.  
(864) 591-1350



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**The owner of this Blue Star  
BBQ restaurant is Kim Morrow**

[E-Mail the Owner](#)



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Where the Food is the Star

### Main Menu Page

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- ★ Main Menu
- ★ Family Deals
- ★ Buy the Pound
- ★ Specials
- ★ Side Items
- ★ Drinks

#### Blue Star Sampler

Portion of Pulled Pork, Half Rack of Ribs and a Chicken Half

**\$17.99**

#### Ribs and Pork Combo Plate

Portion of Pulled Pork, Half Rack of Ribs

**\$12.99**

#### 1/2 Chicken Plate

Plate

**\$8.99**

#### Ribs 1/2 Rack

1/2 Rack of St. Louis style Ribs (about 6 ribs)

**\$10.99**

#### Ribs

Full Rack of Ribs Plate

**\$16.99**

#### Ribs and Chicken Combo Plate

Half a Rack of Ribs and a Chicken Half

**\$12.99**

#### Pork and Chicken Combo Plate

A Chicken Half and a Portion of Pulled Pork

**\$9.99**

#### Blue Star Jumbo Sandwich Plate

Pulled Pork or Chopped Chicken

**\$7.99**

#### Regular Sandwich Plate

Pulled Pork or Chopped Chicken

**\$6.99**

#### Regular BBQ Plate

More Pulled Pork or Chopped Chicken and Bun on the Side

**\$7.99**

#### Large BBQ Pork Plate

Larger Portion of Pulled Pork or Chopped Chicken and Bun on the side

**\$9.99**

#### Calabash Chicken Plate

Five pieces of our special Calabash Chicken

**\$6.99**

**Stuffed Baked Potato**

As a Plate with Pulled Pork or Chopped Chicken

**\$6.99**

**Blue Star Jumbo BBQ Sandwich**

Pulled Pork or Chopped Chicken on a 5

**\$4.49**

**Blue Star Regular BBQ Sandwich**

Pulled Pork or Chopped Chicken on a 4

**\$3.49**

**Hash and Rice Plate**

Hash Served over a Bed of Rice

**\$6.99**

**Half & Half Plate**

Portion of chopped pork and chopped chicken

**\$7.49**

**Half & Half Plate**

Portions of Pulled Pork and Chopped Chicken w/ a bun

**\$7.69**



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## Here are some pictures from Blue Star BBQ





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★ Hours

## Newsletter Sign-up

★ Comments

Sign up below for our monthly email newsletter. We will keep you updated on Blue Star BBQ news, fundraisers, specials, new items, and special events.

★ Newsletter

★ Pictures

★ Apply Online Note: We will never sell or distribute your email address



### Contact Information

First Name:

Last Name:

Address:

City:

State:

Zip:

E-mail address:

Date Of Birth:

Jan  YEAR

[To Unsubscribe](#)



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### Hours of Operation

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<b>Monday</b>	<b>11:00a. - 8:00pm</b>
<b>Tuesday</b>	<b>11:00am - 8:00pm</b>
<b>Wednesday</b>	<b>11:00am - 8:00pm</b>
<b>Thursday</b>	<b>11:00am - 9:00pm</b>
<b>Friday</b>	<b>11:00am - 9:00pm</b>
<b>Saturday</b>	<b>11:00am - 9:00pm</b>
<b>Sunday</b>	<b>11:00am - 2:30pm (Buffet Only)</b>



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**We value your input, good or bad, so please tell it like it is. I will contact you personally if you desire.**



Type of Comment:

First Name:

Last Name:

Phone: (  )  -

E-Mail:

**Do you want someone from Blue Star BBQ to Contact you personally?**

Yes  No

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- Catering
- Contact Us
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- ★ Apply Online

Interested in working at a place that serves great food and have the opportunity to work with other nice people like YOU?

Please complete the following contact information and a member of our management team will contact you to schedule a personal interview.



### Contact Information

Title:

First Name:

Last Name:

Address:

City:

State:  Zip:

Phone:   -

E-mail address:

### Availability to Work

Mornings? Yes  No

Days? Yes  No

Evenings? Yes  No

Weekends? Yes  No

Date Available to Start Work?  MM/DD/YYYY

Are you legally able to be employed in this country? If hired, verification will be required by

Yes  No



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### Family Packs

#### BBQ

##### 4-6 People

1 1/2 lbs. BBQ Pork  
3 Pints of Sides  
6 Buns  
One Dozen Hush Puppies  
1/2 Gallon Tea or Lemonade  
**\$25.99**

##### 6-10 People

3 lbs. BBQ Pork  
2 Quarts (or 4 Pints) of Sides  
1 Dozen Buns  
Two Dozen Hush Puppies  
One Gallon Tea or Lemonade or 2-Liter Soft Drink  
**\$39.99**

#### RIBS

##### 4-6 People

2 Full Racks of Ribs  
3 Pints of Sides  
One Dozen Hush Puppies  
1/2 Gallon Tea or Lemonade  
**\$39.99**

##### 6-10 People

4 Full Racks of Ribs  
2 Quarts (or 4 Pints) of Sides  
Two Dozen Hush Puppies  
One Gallon Tea or Lemonade 2-Liter Soft Drink  
**\$59.99**

#### Chicken

##### 4-6 People

4 Chicken Halves  
3 Pints of Sides  
One Dozen Hush Puppies  
1/2 Gallon Tea or Lemonade  
**\$25.99**

##### 6-10 People

8 Chicken Halves  
2 Quarts (or 4 Pints) of Sides  
Two Dozen Hush Puppies  
One Gallon Tea or Lemonade 2-Liter Soft Drink  
**\$39.99**



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### Specials

#### All You Can Eat Ribs, BBQ and Sides

Tuesdays and Fridays and Saturdays Only

**\$10.95**

(While supplies last)

**No Sharing or Carry Out**

#### All You Can Eat Sunday Buffet

11am - 2:30pm

**\$8.99**

Drink Included

#### Jumbo Sandwich Plate

Tuesday

**\$7.99**

Includes 2 sides and a drink

**Includes dessert**

#### Pork Tenderloin Plate

Wednesday -- Melt in your mouth Pork Tenderloin

**\$7.99**

includes 2 sides and a drink

**Includes dessert**

#### Hash & Rice Plate

Wednesday -- Our Delicious Hash served on a bed of

**\$6.99**

includes 2 sides and a drink

**includes dessert**

### **Half & Half Plate**

Thursday -- Pork and Chicken to satisfy a hunger

**\$8.39**

Includes 2 sides and a drink

**Includes dessert**

### **Calabash Chicken Plate**

Thursday -- 5 pieces of our delicious Calabash Chi

**\$7.49**

Includes 2 sides and a drink

**Includes dessert**

### **Kid's Menu**

**Child's Plates come with 1 side. Children Only Please**

<b>One BBQ Sandwich</b>	<b>\$4.99</b>
<b>Calabash Chicken</b>	<b>\$4.99</b>
<b>Mini Corn Dogs</b>	<b>\$4.99</b>



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Where the Food is the Star

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- ★ Specials
- ★ Side Items
- ★ Drinks

### BBQ By The Pound

<b>Pulled BBQ Pork or Chopped Chicken</b>	<b>\$9.95</b>	Per Pound for 1-9 pounds
<b>Pulled BBQ Pork or Chopped Chicken</b>	<b>\$8.95</b>	Per Pound for 10-19 Pounds
<b>Pulled BBQ Pork or Chopped Chicken</b>	<b>\$8.45</b>	Per Pound for 20+ Pounds
<b>Hash</b>	<b>\$6.99</b>	Per Pound
<b>1/2 Rack of Ribs</b>	<b>\$9.99</b>	1/2 Rack of Ribs
<b>Full Rack of Ribs</b>	<b>\$15.99</b>	Entire Rack of Ribs

### Sides

	Single	Pint	Quart
<b>Redskin Potato Salad</b>	1.99	4.49	7.49
<b>Cole Slaw</b>	1.79	3.99	6.49
<b>Baked Beans</b>	1.79	3.99	6.49
<b>Sweet Potato Crunch</b>	1.99	4.99	7.99
<b>Brunswick Stew - Bowl</b>	1.99	4.29	7.49
<b>French Fries</b>	1.99		
<b>Hush Puppies</b>	1.99		
<b>Corn on the Cob</b>	0.99		
<b>Mac and Cheese</b>	1.99	3.99	6.99
<b>Green Beans</b>	1.79	3.49	5.99
<b>Onion Rings</b>	1.99		
<b>Fried Okra</b>	1.29		
<b>Baked Potato</b>	1.99		

### Drinks

<b>Coke, Diet Coke, Lemonade, Sprite</b>	1.29
--	------

<b>Dr. Pepper,Diet Dr. Pepper,Cherry Coke, Fruit Pun</b>	1.29
<b>Iced Tea</b>	1.29
<b>Tea/Lemonade To-Go (per gallon)</b>	3.99
<b>Tea/Lemonade To-Go (per half gallon)</b>	2.49

# Employer Report of Change - Intranet

Account Number 420497

Employer Name A WING AND A PRAYER  
INC

FEIN 20-2149085

Trade Name MUTTS BBQ

C/O Address

Address Line 1 1000 N PINE STREET STE 31

Address Line 2

City SPARTANBURG State SC

Zip 29303

County 42

Complete

1 Type of change (Check appropriate checkbox)

Corporate Name or Officers Changed by Charter Amendment

New Corporate Name

New Corporate Officers 1 Title

KATHLEEN HICKS  
PRESIDENT SSN

095-88-5411! 5

New Corporate Officers 2 Title

KIMBERLY MORROW  
VICE PRESIDENT SSN

SMC 10/29/2009

Trade Name Changed New Trade Name

BLUE STAR BARBECUE

Business Physical Location Changed to

Additional Location

C/O Address

SMC 10/29/09

Address Line 1

Address Line 2

City

State

Zip

County

New Phone

Mailing Address Changed to

C/O Address

Address Line 1

Address Line 2

City

State

Zip

New Phone

Business Discontinued (No Longer in Business)

Date Of Final Payroll

Date

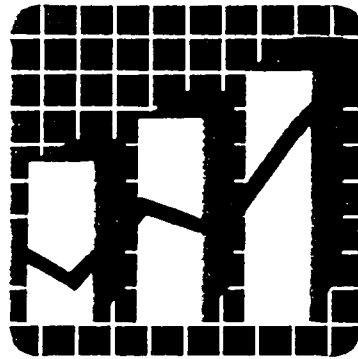


## Upstate Economy Continues Slow Recovery

**T**he *Economic Activity Report of the SC Upstate* revealed a continued mix of promise and uncertainty during the first quarter of 2003. Two major announcements in Anderson County heralded the creation of 155 jobs. Fraenkische Rohrwerke, a German plastic injection molding company, will locate in the former Tenneco facility and create 70 new jobs over a five-year period, while Ilpea Incorporated will generate 85 new jobs within its first year of operation as a supplier for Electrolux Home Products. Alcoa Home Exteriors also announced plans for the expansion of its Galfney plant, which will result in the creation of 30 new Cherokee County jobs.

In Greenville County, Sara Lee Corporation announced an expansion that will create 95 new jobs at its Greenville bakery. Confidence in continued growth of the Greer area was evidenced by the Greenville Hospital System's announcement of plans to develop a \$100 million Greer campus. Kemet Corporation, however, announced the layoff of 280 workers from its Simpsonville and Fountain Inn plants. General Electric also announced the layoff of 46 salaried engineers due to a decreased demand for electricity-producing turbines.

Oconee County celebrated an announcement by Westminster Beacon LLC of its plans to purchase the former Beacon Blanket Manufacturing plant. This new Minnesota-based blanket manufacturing operation will bring between 65 and 100 jobs to Westminster. In an effort to address ongoing state



budget shortfalls, Clemson University announced the layoff of 200 employees that will result from the merger of departments within the College of Agriculture, Forestry and Life Sciences.

After 18 months of weather-related delays, site work began on the QS/I Data Systems Corporate Headquarters in downtown Spartanburg. Upon completion, the facility will create 50 new jobs. Another 55 jobs will move into the county as Prescolite Lighting Company relocates from California. The closure of Shipley Company, however, resulted in the loss of 51 jobs.

The Appalachian Council of Governments produces this unique report on a quarterly basis for a 10-county Upstate region. For more information, or to purchase the report, please contact the Information Services Department at 864-242-9733.



## Natural Hazard Mitigation Planning Effort Initiated

**I**n accordance with FEMA's Disaster Mitigation Act 2000 legislation, each county is required to develop a local disaster mitigation plan as part of the State of South Carolina's renewed emphasis on reducing disaster losses through the implementation of hazard mitigation programs. The Appalachian Council of Governments has been enlisted by the South Carolina Emergency Preparedness Division to help develop these plans for each county in the region.



The hazard mitigation plan is the foundation for developing hazard-specific mitigation measures that ensure local jurisdictions are in the best possible position to minimize damage, expedite the recovery process, and take advantage of federal assistance to individuals and/or public entities. The COG is beginning the process of working with local Emergency Preparedness Directors and other key stakeholders to assess the vulnerability of the region's residents and critical facilities to natural hazards.

*(Planning continued on page 2)*

## PCBDSN Holds Open House

**T**he Pickens County Board of Disabilities and Special Needs (PCBDSN) celebrated the completion of their new facility with a grand opening on Friday, May 30<sup>th</sup>. PCBDSN provides a variety of services and programs for over 500 persons with disabilities throughout Pickens County. One of the programs, known as Better Skills, provides individuals with special needs training and life experience for the development of vocational, pre-vocational, and social integration skills. The Sheltered Employment program provides employment for adults with



disabilities who have the mind set to work in a "real work environment" but are unable to do so because of their disability. The work is very similar to production work found in local industries, which makes it feel like a typical work environment. Numerous local industries provide work for the program. The clients are given a paycheck based on the number of pieces they complete. It is a wonderful program that gets the local industries involved.

PCBDSN outgrew its previous facility located in downtown Easley and started looking for funds to construct a new building in 1999. The South Carolina Board of Disabilities and Special Needs awarded PCBDSN \$900,000 to assist in constructing the \$1.8 million project. Pickens County provided in-kind services that included grading services. PCBDSN then turned to the ACOG and Pickens County for assistance in receiving and administering a \$500,000 Community Development



Block Grant (CDBG) from the South Carolina Department of Commerce. Pickens County agreed to be the applicant for the CDBG funds on behalf of PCBDSN.

The new 32,000 square foot building has many amenities that PCBDSN never had in the previous building. The new facility includes a dining room, training rooms, a conference room, offices for administrative staff and a large open warehouse-like area for the production jobs. The building construction was complete in late February, and the organization moved in late March. The PCBDSN is very excited about this new facility and is looking forward to assisting even more clients in the near future.

*(Planning continued from page 1)*

Once the most vulnerable areas and facilities have been identified, the COG will work with stakeholders to develop goals and objectives to maximize the effectiveness of mitigation activities. The goals and objectives will guide development of specific mitigation strategies that target appropriate resources and prioritize actions necessary to reduce future disaster-related losses.

Information developed through this process will be the basis for each county's mitigation plan. The plan should serve as the focal point for mitigation decisions made in each county in the future. For more information, please contact Chip Bentley at the COG.

## Development Corporation News

**T**he Appalachian Development Corporation Board approved a \$100,000 loan to Palmetto Custom Films International, Inc., in Anderson County to be used for equipment and working capital. The business is owned by Dave Wilson. Greenville First Bank will provide primary funding on the equipment. Ten new jobs will be created as a result of the project.

The Board also approved a \$100,000 loan to Earth Artist Mountain Studio-Campus, LLC of Seneca. The business is owned by Michael Lentine. The loan proceeds will be used for working capital in remodeling an old mill building into a film studio and stage. The project will create two new jobs and retain two jobs.

A \$30,000 loan to Pocker-Knocker's Reproduction Lighting and Wares on Haywood Road in Greenville has been closed and funded to provide for an expansion of inventory and working capital.

A loan of \$150,000 to Custom Forest Products, Inc., was closed and funded to allow Eric Foust to take over ownership and operate a pallet and crate manufacturing company, keeping 20 jobs in the Spartanburg area.

A loan to Pro Weave, LLC for \$150,000 was closed and funded, allowing the company to purchase additional machinery to expand manufacturing of throws and towels in Anderson County.

An SBA 504 loan to Joan Peters and Associates, Professional Association, in the amount of \$120,000 was funded in June, providing long term, fixed rate financing for the acquisition of office space on South Pleasantburg Drive in Greenville.

An SBA 504 loan to A Wing and A Prayer Enterprises was funded in the amount of \$555,000, providing long term fixed rate financing of the land, building, and equipment for a new Zaxby's on John B. White, Sr., Boulevard in Spartanburg.





## The History of Mutt's BBQ

An idea is planted, a dream is nurtured, and the dream becomes reality. A simple process, it seems, but the road from the idea to reality is much more.

The idea for Mutt's BBQ stemmed from a long family tradition in Randy Jones' family. His grandfather, on special occasions, especially Christmas, dug an open pit, cut hickory wood, made his

special sauce, and presented his family with a whole pig, prepared to perfection. Years later, his son Mutt, desiring to pass along the tradition to his sons, began having "pig pickings" every Thanksgiving. Friends, neighbors, and family were all invited. As many as 150 still gather on Thanksgiving Day for this special feast.

Mutt was well known for finding people jobs, and it was on Thanksgiving Day in 1996 when Mutt had the idea that someone should open a BBQ restaurant. The idea became a dream to his son Randy, who had been in the restaurant business for 27 years.

Randy devoted the next year and a half to developing the dream. With the help of an architect, Randy designed a cozy family atmosphere, complete with trains, murals, and an open fireplace. He borrowed his mom's recipes, his father's nickname, and his dream became reality with the opening of the first Mutt's BBQ in Greer, SC in November, 1998.

Site Designed and Maintained by [BIN112, LLC](#)

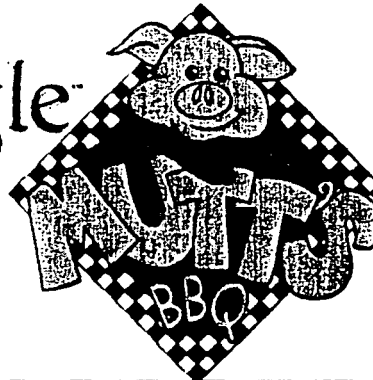


Greer  
101 West Road  
Greer, SC 29650  
phone: 864.848.3999  
fax: 864.848.7715  
Email

Google

Easley  
1020 Powdersville Road  
Easley, SC 29640  
phone: 864.442.1400  
fax: 864.442.1403  
Email

Google



Site Designed and Maintained by [BIN112, LLC](#)

III. CHOOSE EXTRAS

Choose Sides:

They don't call it Meat and Three for Nothin

To add a compliment to our smoked and BBQ'd meats we offer these items: Cole Slaw, Baked Beans, Potato Chips, Potato Salad, Corn on the Cob, Green Beans, Macaroni & Cheese, SWEET POTATO CRUNCH.

WHAT ELSE YOU GOT?

For the occasions where pork, chicken and ribs just aren't enough, we also cater rotisserie chicken, fried chicken, chicken fingers, hamburgers and hot dogs.

Call for details and prices!

A SWEET FINISH!

What a way to end the party! Our desserts include banana pudding, cobblers, brownies, cookies and more.

To include a dessert in any package,

under 100 people + \$1.00, over 100 people + \$.75

**BUT WAIT. THERE'S MORE.**

**DO NOT FORGET TO ASK US ABOUT OUR HOLIDAY SPECIALS**

All of our packages include:

We provide plates, forks, knives, spoons, napkins, cups, serving utensils, sweet tea and lemonade to drink. Hot, mild, sweet & smoky and mustard BBQ sauces and buns!

Picking it up yourselves? Take a dollar off per person. On prices quoted on catering plans.

HELPFUL HINTS

(to ensure our success and yours)

Folks, we book quickly! For Full Service and Drop off with Servers we have limited spaces, so call early for best availability. On certain dates, especially in the holidays and peak seasons, we do close dates out completely up to two weeks ahead of time even for very small quantities of food. Once you know the date of your function, give us a call and we can reserve you in our calendar! Due to the nature of BBQ (low & slow) we cannot always make last minute changes or take last minute orders. We will try to accommodate you as much as possible.

**Greer**

101 West Road  
Greer, SC 29650  
phone: 864.848.3999  
fax: 864.848.7715

**Easley**

1020 Powdersville Road  
Easley, SC 29640  
phone: 864.442.1400  
fax: 864.442.1403

FAMILY PACKS

BBQ

4-6 People	6-10 People
1 1/2 lbs BBQ Pork	3 lbs. BBQ Pork
3 Pint of Sides	2 Quarts (or 4 Pints) of Sides
6 Buns	12 Buns
1 Dozen Hush Puppies	2 Dozen Hush Puppies
1 Gallon of Tea or Lemonade	1 Gallon of Tea or Lemonade
27.99	43.99

Chicken

4-6 People	6-10 People
4 Chicken Halves	8 Chicken Halves
3 Pints of Sides	2 Quarts (or 4 Pints) of Sides
1 Dozen Hush Puppies	2 Dozen Hush Puppies
1 Gallon of Tea or Lemonade	1 Gallon of Tea or Lemonade
28.99	49.99

Ribs

4-6 People	6-10 People
2 Full Racks Ribs	4 Full Racks Ribs
3 Pints of Sides	2 Quarts (or 4 Pints) of Sides
1 Dozen Hush Puppies	2 Dozen Hush Puppies
1 Gallon of Tea or Lemonade	1 Gallon of Tea or Lemonade
35.99	59.99



BBQ By The Pound

Chopped BBQ Pork or Chopped Chicken	10.95 lb
Chopped BBQ Pork or Chopped Chicken	5.49 1/2 lb
(Over ten lbs. 8.95 lb (Over twenty lbs. 8.45 lb)	
One Half Rack Ribs	8.49
One Full Rack Ribs	12.99

Add Paper Products to any order:  
\$0.25 per person

Revised April 2011

Greer - [www.muttsbbqgreer.com](http://www.muttsbbqgreer.com)  
Give us a call at 864.848.3999 or email us at [info@muttsbbqgreer.com](mailto:info@muttsbbqgreer.com)  
101 West Road, Greer, South Carolina  
Monday - Thursday 11 am until 8 pm | Friday - Saturday 11 am - 9 pm  
Sunday 11 am - 2:30 pm (Buffet Only)

Easley (Closed Monday) - [www.muttsbbqeasley.com](http://www.muttsbbqeasley.com)  
Give us a call at 864.442.1400 or email us at [info@muttsbbqeasley.com](mailto:info@muttsbbqeasley.com)  
1020 Powdersville Road, Easley, South Carolina  
Tuesday - Thursday 11 am until 8 pm | Friday - Saturday 11 am - 9 pm  
Sunday 11 am - 2:30 pm (Buffet Only)

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Docket No. 11-AJ-22-0440-AP

Kimberly Michele Morrow , )

Appellant, Petitioner , )

vs. , )

S.C. DEW and A Wing and A Prayer, Inc. , )

Respondent , )

Rebuttal

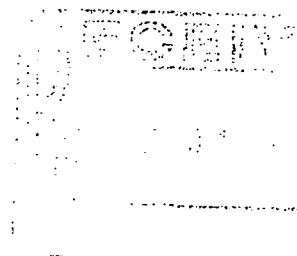
THE STATE OF SOUTH CAROLINA  
In the Administrative Law Court

APPEAL FROM THE SOUTH CAROLINA  
DEPARTMENT OF EMPLOYMENT AND  
WORKFORCE APPELLATE PANEL

Kimberly M. Morrow  
112 Captain Tom Ct.  
Spartanburg, SC 29306  
864-809-8585  
cbm1497@yahoo.com  
Claimant

Brenda Gorski, Esq.  
Legal Department - Dept. of Employment and Workforce  
P.O. Box 8597  
Columbia, SC 29202  
803-737-2666  
legal@dew.sc.gov

A Wing and A Prayer, Inc.  
112 Captain Tom Ct.  
Spartanburg, SC 29306  
864-809-7431  
Employer



**Statements of the Issues on Appeal:**

The DEW states in their brief that the only issue on appeal is my *availability*. This would lend me to believe that the issue of me being an Officer of the corporation was resolved in my favor.

**Facts of the Case:**

The DEW has stated many *facts* pertaining to the ownership and starting of the company. They have also made assumptions as to the employment of Christopher Morrow and my employment. Their statements are wrong and are only assumptions not based in testimony or fact.

First, A Wing and A Prayer, Inc. was started by *Douglas Hicks, Krista Hicks, Raymond Hicks and Kathy Hicks* and the Articles of Incorporation were filed with the South Carolina Secretary of State on January 18, 2005 with Douglas Hicks as the Registered Agent, *see Appendix pages 1,2,3*. This venture was opened as Mutt's BBQ, a licensee of the name from the original restaurant owned by Randy Jones of Greer, SC, at 1000 N.Pine St. Suite 31 Spartanburg, SC 29303. The sole investor of funds was Raymond Hicks.

In July of 2009, Douglas and Raymond cut their ties with Mutt's BBQ and renamed the restaurant Blue Star Barbecue.

Due to embezzlement and financial losses by Douglas Hicks, who had 3500 shares of stock to Raymond Hicks' 6500 shares, Raymond and Kathy, on 9-14-09, held a meeting, where Raymond acted as the majority shareholder, and removed Douglas as an Officer of the corporation which subsequently reverted him to the Manager, *see Appendix pages 11 and 12*. He then fired Douglas which left Douglas as an approximately 1/3 shareholder in the company. In order to remove himself completely from the company, Douglas sold his 3500 shares of stock, *see appendix pages 6,7,8*, to the company which were issued to Christopher Morrow solely. The stock certificates that were issued for both Raymond and Christopher were entered into evidence during the appeal, *see Appendix pages 4 and 5*.

On 2-12-2010, the Articles of Amendment were filed with the Secretary of State showing the removal of Douglas and Krista Hicks and the addition of Christopher and Kimberly Morrow, *see Appendix pages 9 and 10*.

The article submitted by the DEW that showed Christopher Morrow as an owner of the parent corporation Zaxby's restaurant is not only wrong but irrelevant. Christopher Morrow was employed by the Spartanburg Department of Public Safety in July 1993 as a Public Safety Officer and was hired, and still is employed, by the Spartanburg County Sheriff's Office in January 1998 as a Deputy Sheriff, *see Appendix page 13 showing his paystub*. If you look at the SC Secretary of State web site, you will find that Christopher Morrow is the Registered Agent of A Wing and A Prayer, Inc. and Wing and a Prayer Enterprises, Inc. has someone as the Registered Agent that is not affiliated with myself or this company. This again shows their flawed research.

**Arguments:****Argument 1 – Initial finding of ineligibility due to being an Officer of the corporation:**

The DEW's facts have been proven to be in error as to the founding of the corporation. They have even submitted what they feel as "evidence" of some nature to try and affiliate Christopher Morrow with the Zaxby's restaurant. This shows that they not only are erroneous in their research, but in some way jaded in their pursuit of this by trying to discredit Mr. Morrow in some way for whatever reason. Their claims that there is no evidence that associated Christopher with A Wing and A Prayer, Inc. shows their inaccurate research as the Articles of Amendment have been on file with the Secretary of State since February 12, 2010.

The web site that was set up for Blue Star Barbecue was created by Raymond Hicks and he identified me as "owner". This was for the business as he was not involved in the daily operations. This "evidence of ownership" that is submitted by the DEW has no legal standing. The only legal documents of ownership are the issued stock certificates that were issued to Raymond Hicks, in the amount of 6500 shares, and Christopher Morrow, in the amount of 3500 shares, that totaled 10,000 shares. For the DEW to state as fact that I own 1/3 share in A Wing and A Prayer, Inc. is wrong based on the evidence that was submitted to them. There was never any testimony or evidence entered that showed any legal ownership by me.

With the removal of Douglas Hicks, who held 3500 shares, by Raymond Hicks without the approval of Douglas, shows that Raymond had all control of the company and did not need the approval of Christopher for any of the dealings of the business. This further removed anyone involved in the business in having any say so in the closing of the business. However, due to the financial standings of the business, which was submitted to the DEW, there was no more capital to put into it and I agree that there was no other choice but to close.

The closing of Blue Star Barbecue ended all business dealings between myself and Raymond Hicks and A Wing and A Prayer, Inc. d/b/a Blue Star Barbecue and we are not affiliated in any business dealings.

I have never given any testimony that my looking for a restaurant location was under A Wing and A Prayer, Inc. and any assertion by the DEW that I am acting under the company is only an assumption made by the DEW for their own purposes to justify their decision and not made by any statement of fact. Their assumption cannot be held as fact.

The court decision that they are basing this on refers to *McEachern* in which he testified that he was still acting on behalf of his company to try and gain business. I am not, nor have I testified to, working under A Wing and A Prayer, Inc. in pursuit of my employment.

Their assertion that there is nothing of record that shows that I have been in pursuit of employment is also erroneous because the DEW has both of my Eligibility Reviews, which is their accepted internal documentation showing my pursuit of employment for which they pay benefits, on file and their unwillingness to recognize them shows that they are not forthcoming in the facts of this case, due to them not wanting to place them as part of the record, or their lack of research.

**Argument 2 – Further finding of ineligibility due to not having “unrestricted exposure to the labor market.”**

The brief filed by the DEW does not adequately defend their position on the “unrestricted exposure” and I further reiterate that the courts and the legislators would have never intended for someone to never have any personal time while being on unemployment. Their interpretation should be considered as being taken out of the context of the decision and never the intention of the law. Again, under their interpretation, someone cannot be eligible for benefits if they have a doctor’s appointment within that week.

**Conclusion:**

It is my conclusion that the SC DEW decided in error and that their statements are erroneous and would show that a reasonable person would come to my conclusion that I be eligible for benefits.

# APPENDIX

CERTIFIED TO BE A TRUE AND CORRECT COPY  
AS TAKEN FROM AND COMPARED WITH THE  
ORIGINAL ON FILE IN THIS OFFICE

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE

JAN 18 2005

ARTICLES OF INCORPORATION

*Mark Hammond*  
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

1. The name of the proposed corporation is A Wing and a Prayer, Inc.
2. The initial registered office of the corporation is 443 Rolling Pines Lane  
Street Address  
Duncan Spartanburg South Carolina 29334  
City County State Zip Code

and the initial registered agent at such address is Douglas A. Hicks  
Print Name

I hereby consent to the appointment as registered agent of the corporation:

*Douglas A. Hicks*  
Agent's Signature

3. The corporation is authorized to issue shares of stock as follows. Complete "a" or "b", whichever is applicable:

- a.  The corporation is authorized to issue a single class of shares, the total number of shares authorized is 10,000.
- b.  The corporation is authorized to issue more than one class of shares:

Class of Shares	Authorized No. of Each Class
_____	_____
_____	_____
_____	_____

The relative right, preference, and limitations of the shares of each class, and of each series within a class, are as follows:

4. The existence of the corporation shall begin as of the filing date with the Secretary of State unless a delayed date is indicated (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws, as amended) \_\_\_\_\_

050127-0066 FILED: 01/18/2005  
WING AND A PRAYER, INC. A  
Filing Fee: \$135.00 ORIG



Mark Hammond South Carolina Secretary of State

A Wing and a Prayer, Inc.  
Name of Corporation

5. The optional provisions, which the corporation elects to include in the articles of incorporation, are as follows (See the applicable provisions of Sections 33-2-102, 35-2-105, and 35-2-221 of the 1976 South Carolina Code of Laws, as amended).

6. The name, address, and signature of each incorporator is as follows (only one is required):

a. Douglas A. Hicks  
Name  
443 Rolling Pines Lane, Duncan, SC 29334  
Address  
Signature

b.  
Name  
Address  
Signature

c.  
Name  
Address  
Signature

7. I, Keary B. Warner, an attorney licensed to practice in the state of South Carolina, certify that the corporation, to whose articles of incorporation this certificate is attached, has complied with the requirements of Chapter 2, Title 33 of the 1976 South Carolina Code of Laws, as amended, relating to the articles of incorporation.

Date January 12, 2005

Signature Keary B. Warner

Keary B. Warner  
Type or Print Name

302 South Pine Street  
Address

Spartanburg, SC 29302

864-585-2275  
Telephone Number



NUMBER  
0003

SHARES  
3500



A Wing and A Prayer, Inc.

A SOUTH CAROLINA CORPORATION

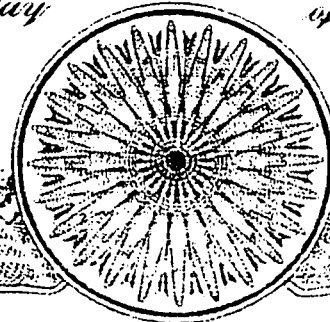
TOTAL AUTHORIZED SHARES 10,000

This Certifies that Christopher Morrow is the  
registered holder of 3500 - Three thousand Five Hundred Shares

transferable only on the books of the Corporation by the holder hereof in  
person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed  
by its duly authorized officers and its Corporate Seal to be hereunto affixed  
this 8 day of September A.D. 2009

*Raymond D. Neels*  
Secretary



\_\_\_\_\_  
President

Page 4

NUMBER  
0001



SHARES  
6,500

**A Wing and A Prayer, Inc.**

A SOUTH CAROLINA CORPORATION

TOTAL AUTHORIZED SHARES 10,000

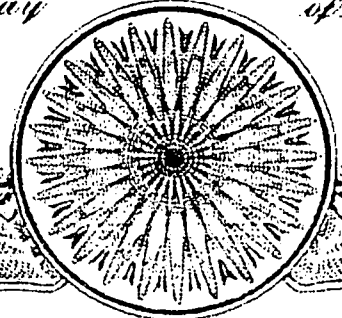
**This Certifies that** Raymond D. Hicks *is the*  
*registered holder of* Six Thousand Five Hundred (6,500) *Shares*

*transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed  
this 16th day of February, 2005 A. D.

Secretary

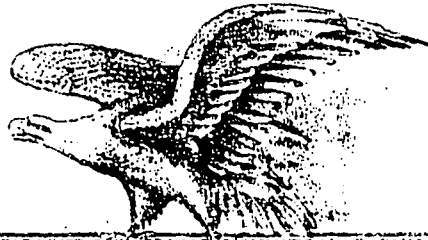
President



DA-5

DATE 6

NUMBER  
10000



SHARES  
3,500

# A Wing and A Prayer, Inc.

A SOUTH CAROLINA CORPORATION

TOTAL AUTHORIZED SHARES 10,000

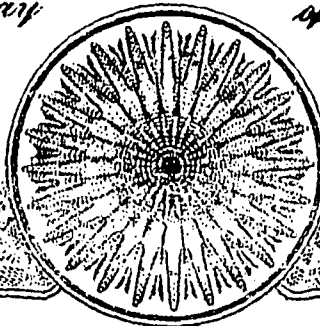
This Certifies that Douglas A. Hicks is the registered holder of Three Thousand Five Hundred (3,500) Shares

*transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.*

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 16th day of February, 2005 A.D.

Secretary

President



The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM	- as tenants in common	UNIF GIFT MIN ACT-	_____Custodian_____
TEN ENT	- as tenants by the entireties		(Cust) (Minor)
JT TEN	- as joint tenants with right of survivorship and not as tenants in common		under Uniform Gifts to Minors Act _____ (State)

Additional abbreviations may also be used though not in the above list.

For value received, Douglas A. Hicks hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

261-45-0483

A. Wing And A Prayer, Inc

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF ASSIGNEE

1000 N. Pine St. ste #31

Spartanburg, SC

\_\_\_\_\_ Shares represented by the within Certificate, and do hereby irrevocably constitute and appoint \_\_\_\_\_

Attorney to transfer the said shares on the books of the within-named Corporation with full power of substitution in the premises.

Dated, 9/17/09

In presence of [Signature]

[Signature]

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATSOEVER.

ATTACH CANCELLED CERTIFICATE HERE

(DOCUMENTARY STAMPS)

<p>CERTIFICATE NO.  0002</p> <p style="text-align: right;">FOR <u>3500</u> SHARES</p> <p>ISSUED TO: <u>Douglas A. Hicks</u></p> <p>DATED <u>16<sup>th</sup> February 2005</u></p>	<p style="text-align: center;">USE FORM BELOW FOR TRANSFER FROM ORIGINAL ISSUE</p> <p>FROM WHOM TRANSFERRED: <u>Douglas A. Hicks</u></p> <p>DATED <u>9-17</u>, 20<u>09</u></p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:50%;">ORIGINAL CERTIFICATE NUMBER</th> <th style="width:25%;">NUMBER OF ORIGINAL SHARES</th> <th style="width:25%;">NUMBER OF SHARES TRANSFERRED</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><u>0002</u></td> <td style="text-align: center;"><u>3500</u></td> <td style="text-align: center;"><u>3500</u></td> </tr> </tbody> </table>	ORIGINAL CERTIFICATE NUMBER	NUMBER OF ORIGINAL SHARES	NUMBER OF SHARES TRANSFERRED	<u>0002</u>	<u>3500</u>	<u>3500</u>
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<u>0002</u>	<u>3500</u>	<u>3500</u>					
RECORD OF TRANSFER OF SURRENDERED CERTIFICATES							
<p>RECEIVED CERTIFICATE NO. <u>2</u> FOR <u>3500</u> SHARES</p> <p>THIS <u>17</u> DAY OF <u>September</u>, 20<u>09</u></p>	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:50%;">NEW CERTIFICATES ISSUED TO:</th> <th style="width:25%;">NUMBER OF SHARES TRANSFERRED</th> <th style="width:25%;">NUMBER OF NEW CERTIFICATES</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><u>A Wings and A Prayer, Inc</u></td> <td style="text-align: center;"><u>3500</u></td> <td></td> </tr> </tbody> </table> <p>DATED <u>9-17</u>, 20<u>09</u></p>	NEW CERTIFICATES ISSUED TO:	NUMBER OF SHARES TRANSFERRED	NUMBER OF NEW CERTIFICATES	<u>A Wings and A Prayer, Inc</u>	<u>3500</u>	
NEW CERTIFICATES ISSUED TO:	NUMBER OF SHARES TRANSFERRED	NUMBER OF NEW CERTIFICATES					
<u>A Wings and A Prayer, Inc</u>	<u>3500</u>						

Date: 8

CERTIFIED TO BE A TRUE AND CORRECT COPY  
AS TAKEN FROM AND COMPARED WITH THE  
ORIGINAL ON FILE IN THIS OFFICE

1 COPY

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE

ARTICLES OF AMENDMENT

Mark Hammond  
SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant Section 33-10-106 of the 1976 South Carolina Code of Laws, as amended, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

1. The name of the corporation is A Wing and A Prayer, Inc.
2. Date of Incorporation January 18, 2005
3. Agent's Name and Address Douglas Hicks 443 Rolling pines Ln. Duncan, SC 29334
4. On September 19, 2009, the corporation adopted the following Amendment (s) of its Articles of Incorporation: (Type or attach the complete text of each Amendment)

See attached minutes of shareholder's meetings.

Remove Douglas and Krista Hicks from the company.

Place Kathleen Hicks as President and Raymond Hicks as Secretary.

Place Christopher Morrow as Treasurer and Kimberly Morrow as Vice-President.

Place Christopher Morrow as the Registered Agent address: 112 Captain Tom Ct. Spartanburg, SC 29306

5. The manner, if not set forth in the Amendment, in which any exchange, reclassification, or cancellation of issued shares provided for in the Amendment shall be effected, is as follows: (if not applicable, insert "not applicable" or "NA").

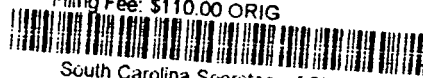
N/A

6. Complete either "a" or "b", whichever is applicable.

- a.  Amendment(s) adopted by shareholder action.  
At the date of adoption of the Amendment, the number of outstanding shares of each voting group entitled to vote separately on the Amendment, and the vote of such shares was:

Voting Group	Number of Outstanding Shares	Number of Votes Entitled to be Cast	Number of Votes Represented at the meeting	Number of Undisputed* Shares	
				For	or Against
	10,000	10,000	6,500	6,500	

100212-0116  
WING AND A PRAYER ENTERPRISES, INC.  
Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

A Wing and A Prayer, Inc.

Name of Corporation

\*NOTE: Pursuant to Section 33-10-106(6)(i) of the 1976 South Carolina Code of Laws, as amended, the corporation can alternatively state the total number of disputed shares cast for the amendment by each voting group together with a statement that the number of cast for the amendment by each voting group was sufficient for approval by that voting group.

b.  The Amendment(s) was duly adopted by the incorporators or board of directors without shareholder approval pursuant to Section 33-6-102(d), 33-10-102 and 33-10-105 of the 1976 South Carolina Code of Laws, as amended, and shareholder action was not required.

7. Unless a delayed date is specified, the effective date of these Articles of Amendment shall be the date of acceptance for filing by the Secretary of State (See Section 33-1-230(b) of 1976 South Carolina Code of Laws, as amended)

Date September 18, 2009

A Wing and A Prayer, Inc.

Name of Corporation

*Christopher B. Morrow*

Signature

Christopher B. Morrow, Treasurer

Type or Print Name and Office

**FILING INSTRUCTIONS**

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
2. If the space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form.
3. Filing fees and taxes payable to the Secretary of State at time of filing application.

Filing Fee	\$ 10.00
Filing tax	<u>100.00</u>
Total	\$110.00

Return to: Secretary of State  
P.O. Box 11350  
Columbia, SC 29211

**Minutes of Annual Shareholder Meeting  
Of Shareholders of  
A Wing And A Prayer, Inc.**

The shareholders meeting of the Corporation was held on September 14, 2009 at the Blue Star BBQ located at 1000 N. Pine st., unit 31, Spartanburg, S.C. 29303. at 5:00pm. Present at the meeting were:

Raymond D. Hicks	V.P./shareholder
Kathleen M. Hicks	Secretary/shareholder

A quorum was verified by the secretary.

Upon motion duly made and seconded election of officers was selected to be the first order of business. Motion duly made and carried, it was

**Resolved**, Kathleen M. Hicks is elected as President, Raymond D. Hicks is elected as Vice President, Kathleen M. Hicks is elected as Treasurer, and Raymond D. Hicks is elected as Secretary.

Documentation provided by Raymond D. Hicks shows that said corporation is insolvent at present and that an infusion of cash is required immediately in order to continue operations. The summary of said insolvency is summarized by the Balance Sheet that will be attached to the minutes. Upon motion duly made and carried, it was

**Resolved**, the Balance Sheet is to be accepted and incorporated into the minutes book. In summary the Corporations' cash position is -45,258.24 less future obligations with a total Balance Sheet of -130,454.22.

Documentation provided by Raymond D. Hicks shows that the Corporation has lost money last month, year to date, as well as last year. It also shows that the last year the business was profitable was 2007. Upon motion duly made and carried, it was

**Resolved**, the Balance Sheet is to be accepted and incorporated into the minutes book.

Upon motion duly made and seconded employment of Douglas A. Hicks as operating partner and manager of the Blue Star BBQ restaurant described above to be terminated immediately. Motion duly made and carried, it was

**Resolved**, the employment of Douglas A. Hicks to be terminated immediately without cause.

A motion duly made and seconded directs the Vice President to pursue ways to procure additional business capital. Upon motion duly made and carried, it was

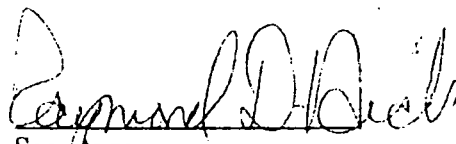
**Resolved**, Vice President, Raymond D. Hicks shall pursue additional investment capital.

A motion duly made and seconded asks for a 1 for 2 stock split assuming that all legalities are properly met. This would mean that 1 share of stock will be issued to each shareholder for each 2 shares they currently own. Each of the shareholders will then be offered the opportunity to buy additional shares of stock from the 5,000 shares that will be outstanding. Once all shareholders have been given the opportunity to purchase additional shares of stock any shares left may be sold by the corporation to other investors. The price of said shares is to be determined by the President of the Corporation. Upon motion duly made and carried, it was

**Resolved**, a 1 for 2 stock split is approved for all shareholders. Vice President, Raymond D. Hicks shall insure that all legalities have been met.

There being no further business to come before the meeting, upon motion duly made, seconded, and carried the meeting was adjourned.

Respectfully Submitted

  
Secretary

Dated: 09/14/2009

THIS IS NOT A CHECK. DETACH THIS STUB AND RETAIN FOR YOUR RECORDS

SPARTANBURG COUNTY PAYROLL ACCOUNT								
CORP	STE.	DIV.	DEPT.	EMPLOYEE NO.	REG RATE	PERIOD END	CHECK DATE	CHECK NO
01	SC	0001	000300	3433	17.7738	10/07/11	10/13/11	0000000
EMPLOYEE				SOC SEC NO.		REG HRS	OT HRS	OTH HRS
CHRISTOPHER B MORROW						84.00	18.00	14.00
STATEMENT OF EARNINGS AND DEDUCTIONS								
EARNINGS			TAXES AND DEDUCTIONS					
DESCRIPTION	CURRENT	YEAR TO DATE	DESCRIPTION	CURRENT	YEAR TO DATE	DESCRIPTION	CURRENT	YEAR TO DATE
GROSS	2221.72	51828.44	FED TAX	118.89	1709.37	FICA	114.60	2725.62
NET	1355.86	34382.51	STE TAX	88.56	1742.40	LIFE	5.90	112.10
REG	1279.71	28571.39	PORS	144.41	3368.86	SCCU	200.00	4200.00
OT	159.96	13037.08	*HMO	178.50	3391.50	*DENT	15.00	196.08
OT	319.93	3732.50	CMC	926.00	9260.00			
ST	248.83	3377.03						
ST	.00	17.77						
VAC	.00	.00						
HLDAY	.00	.00						
SICK	.00	426.58						
AL	213.29	2666.09						

STATEMENT OF ADDITIONAL EARNINGS AND DEDUCTIONS								
EARNINGS			TAXES AND DEDUCTIONS					
DESCRIPTION	CURRENT	YEAR TO DATE	DESCRIPTION	CURRENT	YEAR TO DATE	DESCRIPTION	CURRENT	YEAR TO DATE
REM. VAC.	225.70	SICK	834.90					

ACCOUNT INFORMATION:  
XXXXXXXXXXXXXXXX4092 CHECKING 1355.86

ORIGINAL DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER & HAS A MICROPRINTED SIGNATURE LINE

DIRECT DEPOSIT

SPARTANBURG COUNTY  
P.O. BOX 5666  
SPARTANBURG, SC 29304

DATE 10/13/2011

ONE THOUSAND  
THREE HUNDRED FIFTY-FIVE DOLLARS AND 86 CENTS

\*\*\*1355.86\*

CHRISTOPHER B MORROW  
112 CAPTAIN TOM COURT  
SPARTANBURG SC 29306

\*\*\* NON-NEGOTIABLE \*\*\*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Shirley Robinson, Administrative Law Judge

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Case No. 2011-ALJ-22-0440-AP

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Kimberly Morrow,

Respondent,

v.

South Carolina Department of  
Employment and Workforce  
and A Wing and A Prayer,

Defendants,

Of whom South Carolina  
Department of Employment  
and Workforce is,

Appellant

and A Wing and A Prayer, Inc.  
is also

Respondent.

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CERTIFICATE OF COUNSEL

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Pursuant to Rule 210(g), SCACR, the undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

July 16, 2012



Debra S. Tedeschi, Esquire  
S.C. Bar Number: 15307  
Post Office Box 8597  
Columbia, South Carolina 29202  
(803) 737-0395  
Attorney for Appellant SC DEW