

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JABE M FINKE
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WINDFIELD IA 52659**

**LOUISA COUNTY
ATTN AUDITOR
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WAPELLO IA 52653-0186**

**RANDY MCALLISTER
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**Appeal Number: 05A-UI-05008-LT
OC: 11-21-04 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code §96.19(18)a(6)e - Employment

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the May 4, 2005, reference 01, decision that deducted wages from his claim. After due notice was issued, a hearing was held on June 1, 2005. Claimant did participate and was represented by Randy McAllister, Attorney at Law. Employer did participate through Kay Smith and Julie Ohde.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Louisa County Conservation Board employed claimant via Americorps. Julie Ohde was claimant's supervisor. A grant pays for 85 percent of claimant's stipend and the county pays 15 percent. The agreement was that a \$3,150 stipend would be paid if claimant worked or served 350 hours. While Louisa County does not consider claimant to have been employed and did

not contribute to IPERS, the County did issue a W2 because the stipend is taxed and did report wages paid to claimant under employer account number 102676 to Iowa Workforce Development for the third quarter of 2003 in the amount of \$1,575.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's wages were incorrectly deducted from his claim and the claimant was improperly redetermined.

96.19(18) "*Employment*" provides that:

a. Except as otherwise provided in this subsection "*employment*" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied...

(4) Service performed after December 31, 1971, by an individual in the employ of this state or any of its wholly owned instrumentalities and after December 31, 1977, service performed by an individual in the employ of a government entity unless specifically excluded from the definition of employment for a government entity.

(5) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organization, but only if the service is excluded from "*employment*" as defined in the federal Unemployment Tax Act (26 U.S.C. § 3301-3309) solely by reason of section 3306(c)(8) of that Act.

(6) For the purposes of subparagraphs (4) and (5), the term "*employment*" does not apply to service performed:

(e) As part of an **unemployment work relief or work training program** assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training"...(emphasis supplied)

Inasmuch as the cited provision of the Iowa Code does not apply to Americorps since Americorps is not an unemployment work relief or work training program and there appears to be no other limiting statute or regulation, claimant is entitled to have wages reported by Louisa County restored to his claim and have his benefits redetermined.

DECISION:

The May 4, 2005, reference 01, decision is reversed. Wages from Louisa County shall be returned to claimant's claim and his benefits redetermined in his favor.

dml/kjf