

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS
Lucas State Office Building
Des Moines, Iowa 50319

Appeal Number: 05-IWDUI-0988
OC: 05/15/05
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

**ROBERT C PARKER
1218 N STREAMWOOD
VERNON HILLS IL 60061**

STATE CLEARLY

**CRST INC
% TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216**

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.

**CRST INTERNATIONAL
JIM BARNES
PO BOX 68
CEDAR RAPIDS IA 52406-0068**

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 the Department . 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.

**IOWA WORKFORCE DEVELOPMENT
LILIA KRYUCHKOVA
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209**

(Administrative Law Judge)

August 29, 2005

(Decision Dated & Mailed)

DAN ANDERSON, IWD

Section 96.19-18a(2) – Definition of employment

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated June 28, 2005, reference 02, which denied the claimant's request to have wages added to his unemployment insurance claim.

After due notice was issued, a telephone hearing was scheduled and held on August 22, 2005. The claimant did not participate. Jim Barnes, HR Director, and Brian Kirchner, Independent Contractor Group Director, participated for CRST International. Lilia Kryuchkova, Field Auditor of the Tax Bureau, participated for Iowa Workforce Development. Department Exhibit One was received

as evidence for the hearing.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits effective May 15, 2005. The claimant listed CRST Inc. as his last employer. The department had no record of any wages reported by CRST Inc. to the department on behalf of the claimant. The claimant made a request to have wages he earned with CRST Inc. be included for his unemployment claim.

The department assigned Field Auditor Kryuchkova to review the claimant's request for omitted wage credits. The claimant worked as a truck driver for CRST Inc. from about August 23, 2004 to February 25, 2005. Kryuchkova submitted questionnaire forms to the claimant and CRST Inc., and both parties responded. Kryuchkova received an "Independent Contractor Operating Agreement for Owner-Operators of CRST Van Expedited, Inc." that was signed by the claimant on August 25, 2004.

The claimant admitted to Kryuchkova that he signed the agreement and he worked as a contractor for CRST. The claimant leased a truck from CRST to perform his services. The claimant was paid a percentage of the gross revenue for each shipment, and that he could refuse loads offered. In conclusion, the claimant was not under the direction and control of CRST as to the manner in which he performed his truck driving services.

The claimant was not available when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's request to have wages added to his claim should be approved.

Iowa Code Section 96.19-18 provides. "Employment" means:

a. For purposes of this chapter with respect to any calendar year after December 31, 1971, any employing unit which in any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more excluding wages paid for domestic service or some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual irrespective of whether the same individual was in employment in each such day.

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee...

The administrative law judge concludes that the claimant's request to have wages he earned with CRST Inc., is denied pursuant to Iowa Code section 96.19-18a(2). The claimant entered into a written agreement with CRST to be a driver-operator and perform services as an independent contractor. The claimant did not work under the direction and control of CRST as to the manner in which the services were performed.

DECISION:

The decision of the representative dated June 28, 2005, reference 02, is AFFIRMED. The claimant's request to have the wages he earned with CRST Inc. be added to his unemployment

claim is denied.