

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

Appeal Number: 06-IWDUI-155
OC: 01/25/04
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

MARC E MURRAY
MURRAY GROUP
1505 PLYMOUTH ROAD
MASON CITY IA 50401

IOWA WORKFORCE DEVELOPMENT
MARK HEINY FIELD AUDITOR
EASTDALE PLAZA 11#B
600 SOUTH PIERCE STE #1
MASON CITY IA 50401

DAN ANDERSON, IWD
KAREN PFAB, IWD

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 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.

(Administrative Law Judge)

September 29, 2006

(Decision Dated & Mailed)

Section 96.19-18a(1) – Employment/Corporate Officer
871 IAC 23.3(2)h – Employment/Sole Proprietorship

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated June 21, 2006, reference 01, which deleted the claimant's wages from his employer for his unemployment insurance claim for the base period from October 1, 2002 to September 30, 2003.

After due notice was issued, a hearing was scheduled for a telephone conference call on

September 25, 2006. The claimant, Marc Murray, participated. Mark Heiny, Field Auditor of the Tax Bureau, participated for Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having examined all of the evidence in the record, finds: The claimant filed a claim for unemployment benefits effective January 25, 2004. The claimant established an Iowa corporation as a corporate officer on or about December 31, 1994, known as The Murray Group, Inc. The claimant worked as an employee of the Corporation, and it filed payroll contribution reports to the department showing the taxable wages paid to the claimant.

The department tax bureau assigned Auditor Heiny to investigate delinquent tax reports for the claimant's corporation for the second and third quarters of 2005. When Auditor Heiny checked with the Secretary of the State of Iowa about the status of the claimant's corporation, he learned that it had been dissolved pursuant to a Certificate of Dissolution dated August 3, 1998. The reason stated for the dissolution is the failure to file the 1998 biennial report as required by Iowa Code Section 490.1622.

Auditor Heiny mailed a notice to the claimant dated November 7, 2005 requesting a meeting on November 17 to discuss the delinquent contribution reports and/or contributions. The claimant failed to appear or respond to the notice. Heiny mailed a letter to the claimant dated December 6, 2005 stating his corporation has been dissolved, its tax account would reflect a change from a corporation to sole proprietor, and his wages earned as a sole proprietor were exempt from unemployment taxes. The department would take action to remove the claimant's wages from the quarterly unemployment reports, and he would no longer be eligible to receive unemployment benefits. Once the wages are removed, the unemployment claims that have been filed since 1998, will be overpaid.

Auditor Heiny advised the claimant that he could petition the Secretary of the State of Iowa to reinstate his corporate status, and that the department could amend his unemployment account once proof of reinstatement had been provided.

Since The Murray Group was not an active Iowa Corporation, the tax bureau reverted its employer business tax account status to a sole proprietorship after the date of dissolution, and effective for the year 1999, and subsequent employment tax years. Heiny reviewed the Iowa Employment Security law, and he noted that the claimant's earnings could not be considered as a corporate officer wages for insured work, but as personal compensation from a sole proprietorship. Since the claimant had not earned any wages for insured work with any other employer, he did not have qualifying earnings to be eligible for unemployment benefits effective January 28, 2001, and for the subsequent years he filed, to wit: January 27, 2002; January 26, 2003; January 25, 2004; and, February 6, 2005.

The notice of the Corporate Dissolution was mailed to Attorney N. Leroy Walters. The claimant was not advised of the corporate dissolution. The claimant is seeking reinstatement of corporate status with the Secretary of the State of Iowa.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the department correctly deleted the claimant's wages from his unemployment claim, because his earnings are compensation as a sole proprietor, not as an employee of a corporation.

Iowa Code Section 96.19-18 “Employment” provides:

a. Except as otherwise provided in this subsection “*employment*” means service, including service in interstate commerce, performed for wages ...

(1) Any officer of a corporation. Provided that the term “*employment*” shall not include such officer if the officer is a majority stockholder and the officer shall not be considered an employee of the corporation

871 IAC 23.3(2) provides: The term “wages” shall not include:

h. Sole proprietorship or partnership drawing accounts. The term “wages” shall not include the following:

(1) Any amount of personal compensation withdrawn by a bona fide sole proprietor from the business or profession.

The administrative law judge concludes that the department’s action to delete the claimant’s wages from The Murray Group tax account is correct, because the compensation he earned with it, are earnings as a sole proprietor due to the dissolution of the corporation pursuant to 871 IAC 23.3(2)h, and Iowa Code section 96.19-18a(1). The department established that according to Iowa law, The Murray Group, Inc. has not been operating as a “viable” Iowa corporation since August 3, 1998, such that the business is considered as a sole proprietorship owned and operated by the claimant, for Iowa Employment Security law tax purposes. The claimant’s earnings are considered as personal compensation from a sole proprietorship that is not considered as wages for insured work that may be eligible for unemployment tax purposes.

Although the claimant is seeking corporate status relief with the office of the Secretary of State of Iowa, there has been no determination as of the date of this hearing. Should the claimant obtain corporate reinstatement for The Murray Group, Inc., he should immediately contact Auditor Heiny, and petition the department’s tax bureau for a reversal of the action taken in this matter.

DECISION:

The decision of the representative dated June 21, 2006, reference 01, is AFFIRMED. The claimant’s wages he earned with The Murray Group are compensation from a sole proprietorship, and the department correctly deleted them from his unemployment.

rls