

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

Appeal Number: 08-IWDUI-132
OC: 10/21/07
Claimant: Appellant (1)

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

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

DECISION OF THE ADMINISTRATIVE LAW JUDGE

SARAH C JOHNSON
511 GRAND AVENUE
NEW VIRGINIA IA 50210-7733

HAMMER CONCRETE SERVICES
2532 PACIFIC STREET
NEW VIRGINIA IA 50210

IOWA WORKFORCE DEVELOPMENT
DEE ERICKSON FIELD AUDITOR
PO BOX 348
CRESTON IA 50801

DAN ANDERSON, IWD
KAREN PFAB, IWD

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)

October 29, 2008

(Decision Dated & Mailed)

Section 96.3-4 – Determination of Benefits.
Section 96.3-5 – Duration of Benefits

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated September 18, 2008, reference 06, which denied the claimant's request to have wages added to her unemployment insurance claim from October 1, 2007 to March 31, 2008.

After due notice was issued, a hearing was scheduled for a telephone conference call on October 28, 2008. The claimant participated. The employer, Hammer Concrete Services, did not participate. Dee Erickson, 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 October 21, 2007, and she sought benefits in August 2008. Jerrold Hammer d/b/a Hammer Concrete Services (employer) reported to the department that it paid taxable wages of \$2,022.60 for the claimant's work in the second quarter of 2008. The employer did not report wages in any other quarter for the claimant.

The claimant submitted a request (Omitted Wage form) to the department to review this matter, as she had worked a labor job for the employer from late October 2007 through June 20, 2008. The claimant did not have sufficient wages reported by all of her employers to have a monetary eligible claim, as of August 2008.

The department tax bureau assigned Auditor Erickson to investigate this matter after the claimant submitted an omitted wage credit form on August 5, 2008. Auditor Erickson was able to verify that claimant did work for the employer during the period stated by the claimant, but she was unable to provide proof of earnings for the period from October 1, 2007 through March 31, 2008. Erickson was unable to contact Jerrold Hammer, Owner, due to his incarceration. Erickson contacted an employer accountant (Sadler), but he did not have any record of wages earned by the claimant other than the second quarter of 2008.

Claimant believes she was paid by personal check for her work rather than by a payroll check, and she did not have personal records, such as bank deposits, a 1099 or W-2 statement from her employer to verify her earnings. The claimant did learn from a former employer accountant, Kibbe that she had proof of earnings by a payroll check of approximately \$100 for October 2007. Claimant contacted the owner's daughter, but she had no record of claimant earnings.

The employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code Section 96.3-4 provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest

Iowa Code Section 96.3-5 provides:

5. Duration of benefits. The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser.

The administrative law judge concludes that the claimant's request to have additional wages be added to her unemployment claim from Hammer Concrete Services is **denied**, pursuant to Iowa Code sections 96.3-4, and 96.3-5. The claimant failed to produce evidence that the employer paid her any additional proof of wages other than the second quarter of 2008. While the department believes that the claimant did work for the employer beyond the taxable wages reported, it lacks proof of verified earnings for that period.

DECISION:

The decision of the representative dated September 18, 2008, reference 06, is AFFIRMED. The claimant's request to have additional wages be added to her unemployment claim is Denied.

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