

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

Appeal Number: 08-IWDUI-018
OC: 12/30/07
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

ROBERT W HOFFMAN
24037 240TH AVENUE
CENTERVILLE IA 52544-8528

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.

IOWA WORKFORCE DEVELOPMENT
KIM ARDUESER FIELD AUDITOR
PO BOX 717
OTTUMWA IA 52501

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.

DAN ANDERSON, IWD
JODI DOUGLAS, IWD

(Administrative Law Judge)

February 22, 2008

(Decision Dated & Mailed)

Section 96.4-4 – Required Findings/Requalification
871 IAC 23.18(3)a – Members of Family/Spouse

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated January 24, 2008, reference 04, which held that the claimant was not eligible to receive unemployment insurance benefits effective December 30, 2007, because he failed to requalify by earning wages for insured work of at least \$250 after the previous year in which he received benefits.

After due notice was issued, a hearing was held by telephone conference call on February 20, 2008. The claimant participated. Kim Ardueser, Field Auditor of the Tax Bureau, Iowa Workforce

Development, participated.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having examined all of the evidence in the record, the finds: The claimant filed a claim for unemployment benefits with an effective date of December 31, 2006. The claimant claimed for and received unemployment benefits on this claim.

The claimant filed a new benefit year unemployment claim effective December 30, 2007. The claimant provided payroll stubs to the department that showed he earned gross wages of \$375 from Double R Dairy Bar from November 18, 2007 to December 15, 2007. The claimant provided the wage information in order to establish that he had earned wages for insured work of at least \$250 since his prior year unemployment claim.

The department assigned Auditor Ardueser to investigate whether the claimant's wages qualified him to receive unemployment benefits on his current claim. Ardueser contacted Double R accounting firm representatives who confirmed that the business is a sole proprietorship owned by the claimant's spouse, Nancy Hoffman. Ardueser reviewed state sales tax permits and withholding records that confirmed the sole proprietorship ownership and spousal relationship.

Ardueser reviewed the department rule that wages earned by an individual who is in the employ of a spouse are "exempt" from unemployment, and may not be considered as wages for insured work. Since the claimant had no other wages for insured work to present to the department, a decision was issued that he was ineligible for benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant satisfied the requalification requirement for the second benefit year, December 30, 2007, by earning wages of at least \$250 for insured work.

Iowa Code Section 96.4-4 Required findings provides:

An individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

871 IAC 23.18(3) *Members of family* provides:

- a. Services performed by an individual in the employ of a son, daughter, or spouse ... are exempt from the provisions of this Act.

The administrative law judge concludes that the claimant is NOT eligible to receive unemployment benefits effective December 30, 2007, because he has failed to requalify by earning at least \$250 in wages for insured work since his December 31, 2006, unemployment claim. The department established that the claimant worked as a spouse for his wife/owner of a sole proprietorship (Double

R Dairy Bar), such that his gross wages earned of \$375 are “exempt” from the Iowa Employment Security law, and may not be considered as wages for insured work.

Since the claimant does not have proof of any other wages earned at this point, he fails to meet the \$250 requalification provision of the law.

DECISION:

The decision of the representative dated January 24, 2008, reference 04, is AFFIRMED. The claimant is NOT eligible for unemployment benefits effective December 30, 2007 until such time as he has worked in and been paid wages for insured work of at least \$250.

rls