

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

**Appeal Number:** 05-IWDUI-0984  
**OC:** 01/23/05  
**Claimant:** Appellant (1-R)

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, 4<sup>th</sup> 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.

**CHRISTY M FEDLER  
PO BOX 209  
1833 WEST POINT ROAD  
WEST POINT IA 52656**

STATE CLEARLY

**ALPINE ICE CREAM  
JOHANN HUPRICH  
422 AVENUE E  
WEST POINT IA 52656**

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  
ROSE FISCHER FIELD AUDITOR  
1000 NORTH ROOSEVELT AVENUE  
BURLINGTON IA 52601**

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

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(Administrative Law Judge)

September 9, 2005

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(Decision Dated & Mailed)

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Section 96.19-16a – Definition of Employer  
Section 96.4-4 – Requalification Requirement

#### STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated July 11, 2005, reference 05, which denied the claimant's request to have wages she earned with Alpine Ice Cream added to her unemployment insurance claim.

After due notice was issued, a hearing was scheduled for a telephone conference call September 7, 2005. The claimant participated. The employer did not participate. Rose Fischer, 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 23, 2005. The claimant made a request to have wages she earned with Johann Huprich d/b/a Alpine Ice Cream & Deli be added to her claim, as this employer had not reported any wages to Iowa Workforce Development, and there was no tax account established with the department. The request of the claimant was denied by the issuance of the decision in this matter. Since the claimant did not have qualifying wages for insured work of at least two hundred and fifty dollars, she was denied unemployment benefits for her second benefit year.

When the claimant filed her claim, she presented pay-stubs from Green Acres Club and Alpine Ice Cream to the department that showed year-to-date gross earnings of \$89.25, and \$180 through the pay periods ending March 27, and May 13, 2005. The department conditionally accepted the \$269.25 earnings as qualifying wages to satisfy the \$250 requalification threshold that made the claimant eligible for second year unemployment benefits. However, because the department had no record that Alpine Ice Cream had an employer tax account with the department, it referred this matter to Auditor Fischer for an investigation.

Fischer contacted the employer (Alpine Ice Cream), and she received information about the business that she recorded on a report to determine liability. The Iowa business is a sole proprietorship owned by Johann Huprich, and it began employing workers on April 25, 2005. The employer did not have any wages paid to employees until the second quarter of 2005 in the amount of \$480. The claimant was the only employee working for the business and she was paid \$60 per week.

Fischer reviewed the Iowa Employment Security law regarding tax liability for Iowa employers. The law provides that liability attaches when an employer pays wages of at least \$1,500 in a quarter or had in employment at least one individual who performed service for some portion of a day in each of twenty calendar weeks. Fischer concluded that the employer did not meet the legal criteria for the definition of a "taxable employer", because the business did not meet either criteria.

Fischer noted that the employer may satisfy the criteria for a taxable employer on or near the week of September 11 to September 17, 2005.

## 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 96.19-16 provides: "*Employer*" means:**

- a. For purposes of this chapter with respect to any calendar year after December 31, 1971, any employing unit which in any calendar year 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 for some portion of a day in each of twenty different calendar weeks, ... , had in employment at least one individual irrespective of whether the same individual was in employment in each such day.

The administrative law judge concludes that the claimant's request to have wages she

earned with Johann Huprich d/b/a Alpine Ice Cream & Deli be added to unemployment claim is denied pursuant to Iowa Code Section 96.19-16a. As of the date of this hearing (emphasis added), the employer has not met the legal criteria to satisfy the definition of an employer who is required to establish a tax account with the department and report its payroll wages paid to employees to the department for tax purposes. The employer has not paid wages of at least \$1,500 in any quarter, and it has not had one or more employees satisfy the twenty-week requirement.

The further issue is whether the claimant may become eligible for unemployment benefits should Alpine Ice Cream & Deli become a taxable, liable employer, such that the wages she earned are reportable for to the department and would constitute wages for insured work.

**Iowa Code Section 96.4 Required findings provides:**

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.

The administrative law judge concludes that the claimant's request to have wages she earned with her employer, Johann Huprich d/b/a Alpine Ice Cream & Deli, is **REMANDED** to the Department Tax Bureau, and claims section of the department pursuant to Iowa Code section 96.4-4. If the Tax Bureau should determine that the employer has met the legal criteria for the establishment of a department tax account, and it is required to report the claimant's wages for insured work, at any time subsequent to the claimant's first benefit year, then a decision should be issued making her eligible for unemployment benefits for the second benefit year, if she otherwise satisfies the requirement of earning \$250.

Fischer questioned whether the claimant could become eligible for benefits, should Alpine become a liable employer in September 2005 or at anytime, thereafter. The administrative rules do not limit the claimant's ability to satisfy the \$250 earnings requalification as of the date she files her second benefit year claim (January 23, 2005). Iowa Administrative rule, 871 IAC 24.31(6) provides that a disqualification for lack of the \$250 in insured work shall be removed upon verification that the claimant has satisfied the criteria, so long as it is accomplished during or subsequent to the previous benefit year.

**DECISION:**

The decision of the representative dated July 11, 2005, reference 045, is **AFFIRMED**. The claimant's request to have the wages she earned with Johann Huprich d/b/a Alpine Ice Cream & Deli be added to her unemployment claim is denied, as of the date of this hearing. Claimant's request is **REMANDED** to the Tax Bureau to monitor whether Alpine does become a liable employer, and if so, notify the claims section, should the wages earned by the claimant for the business enable her to satisfy the \$250 requalification requirement.

rls