

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

Appeal Number: 08-IWDUI-044
OC: 02/03/08
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

JEANNE A FULLARD
316 SECOND AVENUE
CHARLES CITY IA 50616-2927

HABITAT FOR HUMANITY OF IOWA INC
BOBBI BENDICKSON EXECUTIVE DR
103 E STATE STREET #302
MASON CITY IA 50319-0209

IOWA WORKFORCE DEVELOPMENT
MARK BRADY FIELD AUDITOR
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

DAN ANDERSON, IWD
JODI DOUGLAS, 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)

April 11, 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 March 18, 2008, reference 02, which denied the claimant's request to have wages added to her unemployment insurance claim from July 1, 2007 to September 30, 2007.

After due notice was issued, a hearing was scheduled for a telephone conference call on April 8, 2008. The claimant did not participate. The employer submitted a written statement in lieu of participation. Mark Brady, Field Auditor of the Tax Bureau, participated for Iowa Workforce

Development. Employer Exhibit One was received as evidence.

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 February 3, 2008. The claimant stated she last worked for Habitat for Humanity of Iowa Inc. The department did not have any record of this employer reporting any taxable wages for the claimant. The claimant made a written request (for omitted wage credits) to have the wages she earned for the employer from September 11, 2007 through November 30, 2007, be added to her claim.

The department tax bureau assigned Auditor Brady to investigate this matter after the claimant submitted an omitted wage credit form on February 5, 2008. Auditor Brady verified the claimant's dates of employment with Habitat for Humanity. Brady learned from an employer representative that it uses an accounting service to handle payroll reporting issues. The Auditor learned that the representative erroneously classified the claimant as an exempt employee, and the employer agreed that the wages the claimant earned from September 11, 2007 through November 30, 2007, should be reported as taxable wages to the department.

Auditor Brady confirmed that the wages earned by the claimant for September 2007, were not paid by the employer until October 1.

Habitat for Humanity of Iowa Inc. submitted a written statement instead of personally participating in this hearing.

When the claimant was called for the hearing, a person answered and then disconnected the call. The claimant did not respond to a message left with her on a second call until after the close of the record. The claimant was not able to participate due to a family emergency at the time of hearing.

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 wages be added to her

unemployment claim for the third quarter of 2007 from Habitat for Humanity of Iowa Inc., is **denied**, pursuant to Iowa Code sections 96.3-4, and 96.3-5. The employer did correct an err by acknowledging to Auditor Brady that the claimant was not an exempt employee, such that all the wages she earned should be reported to the department as taxable wages. However, the wages may not be credited to the claimant's unemployment claim until the fourth quarter of 2007, as the September 2007 wages were not paid until October 1, 2007. While the claimant will have the benefit of the taxable wages for any future unemployment claim request, those wages may not be considered as part of her "qualifying" base-period wages (October 1, 2006 to September 30, 2007) for her unemployment claim effective February 3, 2008.

Should the claimant remain unemployed and re-file her unemployment claim on or after April 1, 2008, the taxable wages she earned for Habitat for Humanity will be considered as part of her new base period (January 1, 2007 to March 30, 2008) that "may" qualify her for unemployment. The claimant should check with her local workforce center regarding future, benefit eligibility.

DECISION:

The decision of the representative dated March 18, 2008, reference 02, is **AFFIRMED**. The claimant's request to have additional wages be added to her unemployment claim for the third quarter of 2007, is **Denied**. The taxable wages the claimant earned from her employment at Habitat for Humanity of Iowa Inc. are reportable on and after October 1, 2007, and may be so credited, should the claimant elect to file a future unemployment claim.

rls