

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

Appeal Number: 05-IWDUI-0989
OC: 05/29/05
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

TRAVIS L KALMONI
1385 MEADOWVIEW DRIVE #11
MARION IA 52302

OUT BACK JACKS LLP
ATTN: JACQUES ESPIRIDON
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CEDAR RAPIDS IA 52404

IOWA WORKFORCE DEVELOPMENT
CHAD LUTTER
PO BOX 729
CEDAR RAPIDS IA 52406-0729

DAN ANDERSON, 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)

August 29, 2005

(Decision Dated & Mailed)

Section 96.19-16a – Definition of employer

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated July 18, 2005, reference 025, which denied the claimant's request to have wages he earned with Out Back Jacks be added to his unemployment insurance claim.

After due notice was issued, a telephone hearing was scheduled and held on August 23, 2005. The claimant participated. The employer did not participate. Chad Lutter, 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 May 29, 2005. The claimant listed Out Back Jacks as his last employer. The department had no record of any wages reported by Out Back Jacks to the department on behalf of the claimant. The claimant made a request to have wages he earned with Out Back Jacks be included for his unemployment claim.

The department assigned Field Auditor Lutter to review the claimant's request for omitted wage credits. Although the claimant was hired to be a cook, he performed work in preparation for the restaurant to open to the public from about November 29, 2004 to December 16, 2004. When the claimant expressed his dissatisfaction with the delay of the restaurant opening, he was terminated.

Lutter contacted the claimant and Member Espiridon in order to determine whether the wages earned by the claimant for Out Back Jacks should have been reported to the department as wages for insured work pursuant to an employer tax account.

Lutter learned that the restaurant did not have an established business for at least twenty-weeks (20) in the fourth quarter of 2004 (the period that the claimant was paid wages), and it did not have a payroll of gross wages paid to employees of at least \$1,500 for that quarter. Lutter concluded that the employer did not become liable until the first quarter of 2005, such that the wages earned by the claimant in the fourth quarter of 2004 are not eligible for unemployment credits.

The employer failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's request to have wages added to his 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 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 some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, 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 he earned with Out Back Jacks LLP, is denied pursuant to Iowa Code section 96.19-16a. There is no issue that the claimant worked as an employee for Out Back Jacks, and that he was paid wages. However, the restaurant did not become a "liable employer" for unemployment tax purposes until January 2005, several weeks after the claimant was terminated.

The restaurant did not meet the criteria of a liable employer by operating the business for at least twenty-weeks in the fourth quarter of 2004, and it did not payout gross was of at least \$1,500 to its employees during that period.

DECISION:

The decision of the representative dated July 18, 2005, reference 05, is AFFIRMED. The claimant's request to have the wages he earned with CRST Inc. be added to his unemployment claim is denied.

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