

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

Appeal Number: 07-IWDUI-079
OC: 09/18/05
Claimant: Appellant (1)

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, 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.

DARREN E O'DONNELL
943 23RD AVENUE
CORALVILLE IA 52241-1220

STATE CLEARLY

MID-IOWA VENTURES INC
AUTOMOTIVE SERVICES GROUP
419 SECOND STREET SE
LE MARS IA 51031

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
ROBERT BERNDT FIELD AUDITOR
1000 EAST GRAND AVENUE
DES MOINES IA 50319

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
KAREN PFAB, IWD

(Administrative Law Judge)

June 15, 2007

(Decision Dated & Mailed)

Section 96.3-4 – Determination of Benefits.
Section 96.3-5 – Duration of Benefits
871 IAC 24.14(7) – Request to Reopen

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development decision dated May 11, 2007, reference 05, which denied the claimant's request to have wages added to his unemployment insurance claim for the period from April 1, 2004 to June 30, 2004.

After due notice was issued, a telephone hearing was scheduled and held on June 11, 2007. The

claimant did not participate. The employer did not participate. Robert Berndt, 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 September 18, 2007. The claimant had been recently employed in a sales position for Mid-Iowa Ventures d/b/a Automotive Services Group (Employer). When the department reviewed the claimant's eligibility for unemployment benefits, it had no record that the employer reported taxable wages to the department for the claimant. The claimant made a request on September 28, 2005 to have wages he earned with the employer be added to his claim.

The department assigned Auditor Berndt to investigate the claimant's request. Berndt learned that the claimant worked a sales position for the employer, but due to financial difficulties, it did not pay the claimant for wages he earned (about \$3,800) for the period from March 1, to May 31, 2004.

The claimant sought the assistance of the Commissioner of the Iowa Division of Labor to recover his unpaid wages. An employer representative responded to the Division request that it did not have sufficient capital to pay the claimant's wages, but it allowed the claimant to keep a balancer as partial compensation. A Division Attorney advised the claimant that although he had a valid claim for wages against his former employer, it would not further pursue collection due to a lack of employer assets.

Auditor Berndt confirmed that the employer closed its Iowa business on May 28, 2004, and it terminated its department tax account (payroll contribution/wages). Since the employer failed to report the claimant's earnings and pay taxable wages to the department, the claimant could not be given credit for his earned, but unpaid employer compensation, for unemployment purposes.

The claimant and the employer failed to respond to the hearing notice. The claimant called-in after the close of the record, as he had failed to read and follow the hearing notice instructions.

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 96.3-4 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 he earned with his employer, Mid-Iowa Ventures d/b/a Automotive Services Group, is **denied** pursuant to Iowa Code sections 96.3-4, and 96.3-5, and the decision denying the claimant's request for omitted wage credits from his employer is affirmed.

The department readily acknowledged that the claimant was not paid for the wages he recently earned with his employer, but in order for those wages to be credited to the claimant's unemployment claim, they must be paid and reported to the department as taxable wages. The claimant made a diligent effort through the Labor Commissioner to seek payment from his employer for his unpaid wages, but this effort was not successful. The law requires that the wages must be paid and reported as taxable wages in order for the claimant to be given credit for unemployment compensation services.

The administrative law judge further concludes that the claimant's request to reopen the record is denied pursuant to 871 IAC 26.14(7). The failure to read and follow the hearing notice instructions is not a good cause to reopen the record.

DECISION:

The decision of the representative dated May 11, 2007, reference 05, is **AFFIRMED**. The claimant's request to have the wages he earned with Mid-Iowa Ventures d/b/a Automotive Services Group be added to his unemployment claim is denied.

rls