

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

KELLY K MCHALE  
UPPER  
1308 K ST SW  
CEDAR RAPIDS IA 52404

POO MILLS INC  
RUFUS MACOOTERS  
729 – 1<sup>ST</sup> AVE SW  
CEDAR RAPIDS IA 52405 3933

Appeal Number: 05A-UI-05357-DWT  
OC: 02/27/05 R: 03  
Claimant: Appellant (2/R)

**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.

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 Workforce Development. 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.19(38) - Wages

STATEMENT OF THE CASE:

Kelly K. McHale (claimant) appealed a representative's May 12, 2005 decision (reference 03) that denied her request to add wages from Poo Mills, Inc., doing business as Rufus MaCooter's, (employer) for September 20, 2004 through February 4, 2005. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 8, 2005. The claimant participated in the hearing with her witness, Kathy McMurray. LaDonna Fay Rich, the owner, appeared on the employer's behalf with her bookkeeper, Diane Stromer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant earn wages from the employer from September 20, 2004 through February 4, 2005?

FINDINGS OF FACT:

Between September 20, 2004 and February 4, 2005, the claimant performed services for the employer's establishment as a bartender. The claimant served the employer's customers when she worked, 6:00 p.m. to 2:00 a.m. The claimant understood she received an hourly wage of \$6.25 per hour.

The employer paid the claimant cash after every shift she worked as a bartender. The employer did not report any payments paid to the claimant for services she performed at the employer's facility as a bartender.

The claimant filed a claim for unemployment insurance benefits during the week of February 27, 2005. The employer did not report to the Department any wages paid to the claimant from September 20, 2004 through February 4, 2005.

REASONING AND CONCLUSIONS OF LAW:

Wages means all remuneration for personal services. Iowa Code §96.19(38). The employer's witnesses acknowledged the claimant, at least sometimes, worked as a bartender at the employer's facilities. The claimant's witness frequented the employer's bar when the claimant worked as a bartender. Although the employer acknowledged paying the claimant some money, the employer did not consider the payment wages. If the employer did not pay the claimant for services she provided as a bartender, the claimant could pursue a legal action against the employer. The facts, however, show the employer paid the claimant for services she provided to the employer as a bartender. The problem in this case is that the payment did not go through the employer's bookkeeper and the claimant did not keep track of the payment. Even though this arrangement is suspicious, all the parties agreed the claimant performed services as a bartender for the employer. As a result, this matter is remanded to the Department to determine the amount of wages the claimant earned and received from September 20, 2004 through February 4, 2005. This amount will be added to the appropriate quarters.

DECISION:

The representative's May 12, 2005 decision (reference 03) is reversed and remanded to the Department. Since the claimant performed services as a bartender at the employer's bar, the employer is legally obligated to pay the claimant for her services. Although the employer gave the claimant money each night she worked as a bartender, the payment was made in cash with no record of the amount given to the claimant. Even though the employer did not report any wages paid to the claimant, the employer paid the claimant wages for her services as a bartender. The amount of wages the employer paid the claimant is remanded to the Department to determine so these wages can be added to the claimant's unemployment insurance claim.

dlw/kjf