



OHIO STATE ATHLETICS

Fawcett Center | 2400 Olentangy River Rd. | Columbus, Ohio 43210

October 3, 2011

TO: Jennifer Henderson, Director of Student-Athlete Reinstatement, NCAA

FROM: Doug Archie, Associate Athletic Director for Compliance

SUBJECT: Violation of NCAA Bylaw 12.4.1 Employment, 16.11.2.1 Extra Benefits and 12.1.2.1.6 Preferential Treatment

This memo is to self-report violations involving The Ohio State University's football program. Specifically, a representative of athletics interests provided five student-athletes wages in excess of hours worked. While the student-athletes were provided an appropriate wage and performed the work asked of them, the then representative paid the five student-athletes in excess of the number of hours worked. As a result, a violation of NCAA Bylaw 12.4.1 and 16.11.2.1 occurred since student-athletes must be paid for work actually performed and at a rate commensurate with the going rate in the specific locality of the work being performed.

The violation was discovered during a joint investigation with the NCAA Enforcement staff. Specifically, the institution and NCAA Enforcement staff interviewed the current five involved football student-athletes: Melvin Fellows, Marcus Hall, Daniel Herron, DeVier Posey and Etienne Sabino. It was discovered that dating back to June 2009, Independence Excavating, Inc. (hereafter referred to as Independence) executive Bobby DiGeronimo (a recently disassociated representative of the University's athletics interests) had employed the five student-athletes. During this time period, the student-athletes worked during the summer or during institutional breaks. The student-athletes were primarily from the Cleveland area and had met Mr. DiGeronimo through the Cornerstone of Hope Gala that occurred in the Cleveland area. Knowledge of the opportunity to work was passed on by word of mouth, primarily by student-athletes who lived in the Cleveland area. Mr. DiGeronimo hired the student-athletes to perform work on behalf of Independence Excavating, Inc or its affiliated businesses, including a carwash and recycling center. The student-athletes would call Mr. DiGeronimo or one of the supervisors and request work for an upcoming period or the next day. The request for work was always granted. The types of jobs were primarily day labor such as clean-up work at a carwash, picking up scrap metal at the recycling yard or sorting through items in a storage area. The student-athletes were paid \$15 per hour, a rate that was less than that paid to nearly all Independence employees since most company employees are unionized.

The student-athletes did not register these jobs with the institution's compliance office as they were instructed to do during compliance education sessions and as required by athletic department policies. Attachment A to this request is a letter from Mr. DiGeronimo to legal counsel for the student-athletes detailing the hours for which the student-athletes were paid. Independence has not provided any more specific payment records to the institution or NCAA Enforcement staff. Attachment B is a chart listing hours worked and overpayments by Independence as agreed upon by the NCAA Enforcement staff and institution. The student-athletes could determine their work schedule, and each student-athlete generally arrived and left around the same time each day. The institution and Enforcement Staff determined the actual number of hours worked based upon cell telephone and bank records and the student-athletes' testimony.

The University notes the following mitigation:

- It was not obvious to the student-athletes that they were being overpaid. The student-athletes were not told their hourly wage. According to the controller, no timecards were completed, as a supervisor verbally reported the hours worked to the controller, who wrote the check. The check provided to the student-athletes did not include the number of hours worked nor the hourly wage. As a result, while the student-athletes generally understood the number of hours they worked due to their presence at the job site, they did not know their hourly rate and would not have known if they were overpaid.
- These employment practices (no timecard and flexible work schedule) were similar to other part-time employees at Independence Excavating.
- All student-athletes worked, and based upon an interview with the supervisor of one of the job sites, there were no issues with the student-athletes not performing the work required of them while at the job site.
- While the institution acknowledges that they were told that they needed to register their employment with the compliance office (including jobs worked for short periods), the student-athletes' general position was that this employment was not arranged through the University nor was it for an extended period of time (e.g., throughout the summer). They did not feel the need to contact the compliance office.
- All of the student-athletes reported that they worked the hours they believed they were asked and paid accordingly. None felt they were overpaid but, as noted above, none knew their hourly wage or the number of hours for which they were paid.

Fellows, Melvin

Melvin Fellows, who is in his third academic year at Ohio State, is from Garfield Heights, Ohio which is less than 10 miles from Independence. Melvin first met Mr. DiGeronimo at the Cornerstone of Hope Gala. Melvin indicated that he worked at Independence between March 2011 and June 2011. Melvin indicated that he would call Mr. DiGeronimo when he was interested in picking up work hours. As a result, Melvin's employment opportunities coincided with institutional breaks or during trips when Melvin traveled home. Melvin indicated that his job responsibilities varied during each term of employment and were consistent with that of a day laborer (e.g., swept, shoveled, straightened racks, etc.). Melvin did not receive any payment records from Independence which would show the total amount he received as a reflection of hours worked multiplied by the rate of pay. Independence did not provide any such payment records to the institution or the NCAA. Based on employment information provided by Independence as to the amount paid and the rate of pay, it was determined that Melvin was paid for 82.5 hours of work at a rate of \$15.00 per hour. The NCAA Enforcement staff and institution concluded that Melvin worked a total of 63 hours at a rate of \$15.00 per hour, and therefore was paid for 19.5 hours of work that was not performed (an over payment of \$292.50).

Hall, Marcus

Marcus Hall, who is in his third academic year at Ohio State, is from Cleveland, Ohio which is less than 10 miles from Independence. Marcus first met Mr. DiGeronimo at the Cornerstone of Hope Gala, but was introduced to the possibility of working for Mr. DiGeronimo by teammate Melvin Fellows. Marcus indicated that he worked at Independence between March 2011 and June 2011. Marcus indicated that he did not call Independence prior to employment, but rather would speak with Melvin Fellows about when Melvin was working and would pick up hours around the same times. As a result, Marcus' employment opportunities coincided with institutional breaks or during trips when both he and Melvin traveled to their respective homes near Independence. Marcus did not receive any payment records from Independence which would show the total amount he received as a reflection of hours worked multiplied by the rate of pay. Independence did not provide any such payment records to the institution or the NCAA. Based on employment information provided by Independence as to the amount paid and the rate of pay, it was determined that Marcus was paid for 66.5 hours of work at a rate of \$15.00 per hour. The NCAA Enforcement staff and institution concluded that Marcus worked a total of 51 hours at a rate of \$15.00 per hour, and therefore was paid for 15.5 hours of work that was not performed (an over payment of \$232.50).

Herron, Daniel

Daniel Herron, who is in his fifth academic year at Ohio State, is from Warren, Ohio which is approximately 50 miles from Independence. Daniel first met Mr. DiGeronimo at the Cornerstone of Hope Gala. Daniel indicated that he received three checks for working at Independence between June 2010 and March 2011. Daniel's employment opportunities coincided with institutional breaks or during trips when he traveled home and was in close proximity to Independence. Daniel indicated that while his job responsibilities varied during each term of employment, he typically worked at a car wash that was a business affiliated with Independence. Daniel indicated that he would call various Independence employees prior to work, including Mr. DiGeronimo or two supervisors. These individuals would tell Daniel what job location to report to and what his job responsibilities would be for that day. Daniel did not receive any payment records from Independence which would show the total amount he received as a reflection of hours worked multiplied by the rate of pay. Independence did not provide any such payment records to the institution or the NCAA. Based on employment information provided by Independence as to the amount paid and the rate of pay, it was determined that Daniel was paid for 104 hours of work at a rate of \$15.00 per hour. The NCAA Enforcement staff and institution concluded that Daniel worked a total of 84.5 hours at a rate of \$15.00 per hour, and therefore was paid for 19.5 hours of work that was not performed (an over payment of \$292.50).

Posey, DeVier

DeVier Posey, who is in his fourth academic year at Ohio State, is from Cincinnati, Ohio. DeVier first met Mr. DiGeronimo at the Cornerstone of Hope Gala during his freshman year (2008-09). DeVier indicated that he received four checks for working at Independence between June 2009 and March 2011. DeVier indicated that he would call Mr. DiGeronimo when he had free time to determine whether he might be able to work at Independence. If Independence had opportunities available, Mr. DiGeronimo would instruct DeVier as to what job location to report to and what his job responsibilities would be for that day. DeVier would then drive from Columbus, Ohio to Independence (approximately 134 miles) before returning to Columbus on the same day. On March 23, 2011 DeVier stayed at the home of Daniel Herron in order to work multiple days at Independence. DeVier indicated that his job responsibilities varied during each term of employment and that he had worked at a carwash, junkyard/recycling center, as well as a construction site. DeVier's testimony indicates that he believed he was being paid approximately \$14 per hour by Independence. However, DeVier did not receive any payment records from Independence which would show the total amount he received as a reflection of hours worked multiplied by the rate of pay. Independence did not provide any such payment records to the institution or the NCAA. Based on employment information provided by Independence as to the amount paid and the rate of pay, it was determined that DeVier was paid for 70 hours of work at a rate of \$15.00 per hour. The NCAA Enforcement staff and institution concluded that DeVier worked a total of 21.5 hours at a rate of \$15.00 per hour, and therefore was paid for 48.5 hours of work that was not performed (an over payment of \$727.50).

Additional Violation for Posey

Additionally, during the course of the investigation the NCAA Enforcement Staff and institution concluded that DeVier received an extra benefit valued at \$102.00 as a result of golfing with Columbus-based photographer Dennis Talbott. Mr. Talbott was a member of Scioto Reserve Country Club and on one occasion, invited DeVier to play golf. DeVier did not pay for the green fees, use of a golf cart or golf club rental fees associated with the outing. As a result, a Level I secondary violation of NCAA Bylaw 12.1.2.1.6 occurred.

Sabino, Etienne

Etienne Sabino, who is in his fourth academic year at Ohio State, is from North Miami Beach, Florida. Etienne first met Mr. DiGeronimo at the Cornerstone of Hope Gala. Etienne indicated that he worked at Independence for two days during July 2010. Etienne stated that he stayed overnight at the home of Daniel Herron in order to work multiple days.

Etienne indicated that he had called Mr. DiGeronimo informing him that he had time to work at the end of July. Mr. DiGeronimo instructed Etienne as to what job location to report to and what his job responsibilities would be for the dates he was available to work. Etienne did not receive any payment records from Independence which would show the total amount he received as a reflection of hours worked multiplied by the rate of pay. Independence did not provide any such payment records to the institution or the NCAA. Based on employment information provided by Independence as to the amount paid and the rate of pay, it was determined that Etienne was paid for 16 hours of work at a rate of \$15.00 per hour. The NCAA Enforcement staff and institution concluded that Etienne worked a total of 12 hours at a rate of \$15.00 per hour, and therefore was paid for 4 hours of work that was not performed (an over payment of \$60.00). [Note—Etienne will be reinstated by the institution based upon repayment of \$60.00 to a charitable organization. Etienne is being included in this self-report because the violation stems from the same set of facts as the other student-athletes requiring reinstatement by the NCAA Student-Athlete Reinstatement staff.]

While the institution acknowledges that the student-athletes were paid by Independence for work not performed, it may not have been obvious to the student-athletes that they were being overpaid. All of the student-athletes believed that they were paid only for work performed. Both the testimony of the student-athletes and the documentation provided by Independence demonstrate that the student-athletes did not know the exact number of hours worked or the exact rate of pay. Thus, the student-athletes did not have a strong reason to believe they were being paid for work not performed. Furthermore, during each student-athlete's testimony, the student-athletes indicated that they did not believe they needed to register their employment at Independence with the institution since it was not arranged by the Athletics Department, the work was casual employment (e.g., not consistent or regular employment) and was done primarily during vacation periods.

In response to the violation, the institution has declared each student-athlete ineligible until reinstated by the NCAA Student-Athlete Reinstatement staff. The institution will require that each student-athlete repay the value of the impermissible funds received to a charitable organization as required under NCAA reinstatement guidelines. The institution will continue to reinforce with student-athletes and coaches the necessity to report all employment to the compliance office as required by athletics department policies. Additionally the institution will continue to work toward implementing an electronic system to gather employment information on a more frequent basis.

cc: Dr. John Bruno, Faculty Athletics Representative
Chris Culley, Senior Vice President and General Counsel
Luke Fickell, Head Football Coach
Jeff Kaplan, Senior Vice President for Advancement
Chris Rogers, Assistant Athletic Director for Compliance
Gene Smith, Associate Vice President and Director of Athletics
Julie Vannatta, Senior Assistant General Counsel for Athletics



INDEPENDENCE EXCAVATING, INC.
5720 Schaaf Road
Independence, Ohio 44131
Industrial & Commercial

Phone 216-524-1700
Fax 216-524-1701
www.indexc.com

Via Email and United States First Class Mail

June 29, 2011

Larry H. James, Esq.
Crabbe, Brown & James LLP
500 South Front Street, Ste. 1200
Columbus, Ohio 43215

Re: Work History of Independence Excavating, Inc. Student-Athlete Employees

Dear Mr. James:

Please accept this letter as verification that your clients DeVier Posey, Daniel Herron, Melvin Fellows, Marcus Hall and Etienne Sabino ("collectively student-athlete employees") were employed by Independence Excavation, Inc. on the following dates:

Mr. DeVier Posey:

10 HRS- Week ending March 27, 2009;
24 HRS- Week ending June 18, 2009;
20 HRS- Week ending February 19, 2010; and
16 HRS- Week ending March 25, 2011

Mr. Daniel Herron:

32 HRS- Week ending June 18, 2010;
40 HRS- Week ending July 30, 2010; and
32 HRS- Week ending March 25, 2011

Mr. Melvin Fellows

13.5 HRS- Week ending March 18, 2011;
40 HRS- Week ending March 25, 2011;
16 HRS- Week ending April 29, 2011; and
13 HRS- Week ending June 17, 2011

Mr. Marcus Hall

13.5 HRS- Week ending March 18, 2011;
40 HRS- Week ending March 25, 2011; and
13 HRS- Week ending June 17, 2011

June 29, 2011

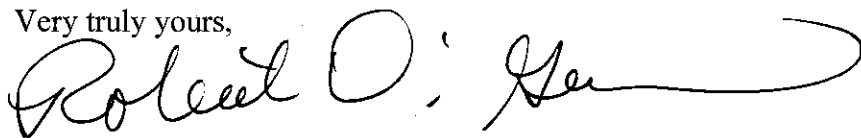
Page 2

Mr. Entienne Sabino

16 HRS- Week ending July 30, 2010

For their work at Independence Excavating, Inc., please note that all student-athletes were paid approximately \$15 per hour, which at wage rates that are comparable to our shop employees and are less than would have been paid for comparable work performed by members of Local 310 Laborers.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert DiGeronimo". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Robert DiGeronimo

Independence Excavating, Inc.

Student-Athlete	Week Ending	Hours Paid	Hours Worked	Hours Over
Fellows	3/18/11	13.5	10	8
	3/25/11	40	32	3.5
	4/29/11	16	12	4
	6/17/11	13	9	4
Total		82.5	61	19.5 (\$292.50)

Student-Athlete	Week Ending	Hours Paid	Hours Worked	Hours Over
Hall	3/18/11	13.5	10	3.5
	3/25/11	40	32	8
	6/17/11	13	9	4
Total		66.5	51	15.5 (\$225)

Student-Athlete	Week Ending	Hours Paid	Hours Worked	Hours Over
Herron	6/18/10	32	26.5	5.5
	7/30/10	40	30	10
	3/25/11	32	28	4
Total		104	84.5	19.5 (\$292.50)

Student-Athlete	Week Ending	Hours Paid	Hours Worked	Hours Over
Posey	3/27/10	10	4	6
	6/18/09	24	5	19
	2/19/10	20	0	20
	3/20/11	16	12.5	3.5
Total		70	21.5	48.5 (\$720)

Posey Golf -- \$62 Green Fees; \$10 Cart; \$30 Clubs

Student-Athlete	Week Ending	Hours Paid	Hours Worked	Hours Over
Sabino	6/30/10	16	12	4
Total		16	12	4 (\$60)