**BEFORE THE**
**EMPLOYMENT APPEAL BOARD**
**Lucas State Office Building**
**Fourth floor**
**Des Moines, Iowa 50319**

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| **KELLY N BARLOW** | : | |
| | : | **HEARING NUMBER:** 20BUI-01124 |
| Claimant | : | |
| and | : | **EMPLOYMENT APPEAL BOARD DECISION** |
| **HRB RESOURCES LLC** | : | |
| Employer | : | |

## N O T I C E

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

**A REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.19-38B, 96.4-3

## D E C I S I O N

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Administrative Law Judge's findings of fact are adopted by the Board as its own.

**REASONING AND CONCLUSIONS OF LAW:**

*Same Hours & Wages:* The rules of the Department provide:

> Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.
> ….
> (26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

871 IAC 24.23(26). Thus if the **part-time** worker experiences a downturn in hours, but that downturn is consistent with the contract of hire then the worker is not considered partially unemployed from the part-time job. The ineligibility is based on the idea that worker is getting the same level as work as usual and that she is not unemployed. But this regulation only applies if the claimant is drawing benefits on credits earned in that part-time job. If the credits are being drawn on some other work then relative to that *base period* work the claimant is considered partially unemployed so long as she earns sufficiently less than his benefit amount – which benefit amount depends on the wages earned in the *base period.*

What then do we do when the same employer provides both sustained full-time work, and part-time work in the base period and these are the only credits in the base period? We are guided by the principle that when a statute has a beneficial and remedial purpose it is to be construed liberally so as to meet most effectively the beneficial end in view and prevent a failure of the remedy intended. *E.g. The Kentucky*, 1 G. Greene 398 (Iowa 1848). A statute that creates regulations conducive to the public good is remedial in nature and should be liberally construed. *Johnson County v. Guernsey Association of Johnson County*, 232 N.W.2d 84 (Iowa 1975). Specifically, since the "purpose of our unemployment compensation law is to protect from financial hardship workers who become unemployed through no fault of their own" the courts "are to construe the provisions of that law liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Employment Appeal Bd*., 570 N.W.2d 85, 96 (Iowa 1997). As a corollary, the courts "are to interpret strictly the law's disqualification provisions, again with a view to further the purpose of the law". *Id*. In construing the act the Court "must keep in mind the beneficial purposes of the Act, [the p]recedent that the employer has the burden of proof regarding misconduct, and [the p]recedent that the disqualification provisions of the Act are to be strictly construed against the employer." *Irving v. EAB,* 883 N.W.2d 179, 193 (Iowa 2016)). We think under these principles, and the discussion of seasonality below, that this a worker with such sustained full-time credits cannot be deemed still employed merely because she continued with part-time work in the base period. Afterall, since the Claimant had full-time credit in two quarters, had she turned down the part-time work this would not be disqualifying, and she would then be eligible for benefits. Such an odd result is contrary to the purposes of the statute as well.

*Total Unemployment:* Total unemployment occurs "in any week with respect to which no wages are payable…and during which the individual performs no services…" *Id. at paragraph a.* So any week when the Claimant does no work at all for the Employer she is totally unemployed. Rule 871-24.23(8) states that where a claimant is "still employed in a part-time job as the same hours and wages" then the claimant "cannot be considered partially unemployed." But this says nothing about total unemployment. The fact that the Claimant worked one week does not transform a claim in a subsequent week to a claim for partial benefits. Thus, even if we had not ruled this regulation inapplicable, it would not apply *by its own terms* to any week when the Claimant does no work and has no wages payable for that week.

*Seasonal Employment:* While other states commonly have express provisions addressing seasonality, Iowa leaves this to be addressed through the concept of monetary eligibility. Those provision require that "the claimant must have (1) base period wages greater than 125% of an individual's highest-earning quarter within the base period, (2) highest-earning-quarter wages at least 3.5% of the statewide average annual wage for insured work, and (3) second-highest-earning-quarter wages at least 50% of the wages required by (2)." *Stanley v. EAB*, No. 16-2047, slip op. at 4 (Iowa

App. 1/10/2018)(summarizing Iowa Code §96.4(2)). This means first of all, that a worker who is so heavily seasonal that she earns *no* substantial wages except in a single quarter will not be eligible for benefits. But the definition of *substantial* is statutory, that is, the next highest quarter has to be at least 1.75% of the

statewide average annual wage for insured work. If it is not then the worker is just not employed in the off-season at all (assuming a season that fits in one quarter), and is not monetarily eligible for benefits no matter how bountiful the take during the season. The second seasonal provision is the distribution requirement. The Code requires that the base period wages must be greater than 125% of the high quarter. This mean algebraically that the high quarter wages can be no more than 80% of the total base period wages. This is obviously addressed to asymmetrical distribution of the wages, that is, it is meant to deny benefits to workers who earns a bunch more in the season than they do in the off-season. Unlike the minimum earnings requirement, this distribution requirement will deny benefits to people who earn a lot of money in the off-season, if they still earn disproportionally more during the season. But what is disproportionate is determined by the statute. And if the Claimant's pattern of wages is not too seasonal under these statutory provisions it is not up to use to devise our own test for excessive seasonality. This Claimant is monetarily eligible, and so we have no further concern for the seasonal nature of the employment, other than the analysis we set out above.

*Charging of Employer:* Next we come to the charging of HRB Resources. The general rule is "that if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer." Iowa Code §96.7(2)(a)(2). In the situation where a full-time seasonal employer continues to supply the Claimant part-time work in the off-season *both throughout the base period and in the benefit* year then we find this provision applicable. This means that since HRB resources is supplying the Claimant the same employment that the Claimant received during the base period then HRB will be relieved of charges on this claim.

**DECISION:**

The administrative law judge's decision dated February 26, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was unemployed within the meaning of the employment security law. Accordingly, the Claimant is **allowed** benefits provided the Claimant is otherwise eligible. The **Employer will not be charged** for benefits on this claim so long as it continues to employ the Claimant on the same basis as in the past.

We note that in the event of a full layoff due to the Covid-19 situation the Claimant will be eligible for benefits and still the Employer will not be charged.

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Ashley R. Koopmans

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James M. Strohman

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Kim D. Schmett

RRA/fnv