

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

---

**HANNAH M BUNDY**

Claimant,

and

**REGIS CORP**

Employer.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 15B-UI-11473**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**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:** 96.4-3, 24.23-26

**DECISION**

**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. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Claimant has had two stints of employment with this employer. She had started work for Regis on January 18, 2014. She voluntarily quit as of July 7 to accept new employment with Cass & Co., LLC. She has since been discharged from Cass & Co. There has not been a fact-finding on her separation from Cass & Co., LLC.

Following the job loss at Cass & Co., the Claimant began working part-time for Regis again in October 2014, where she remains employed. She remains employed at the same hours and wages as at the time of her most recent hire, but different from her original (base period) employment with Regis.

## REASONING AND CONCLUSIONS OF LAW:

In today's decision we reverse the denial on benefits to the Claimant on the theory used below. The unusual nature of this case, however, means that this likely will not be bad news for the Employer.

*Same Hours & Wages:* The Claimant in this case used to work for Regis full time. She then quit to work for another employer, Cass & Co., also full time. She lost the Cass & Co. job. In October Regis took the Claimant back on a part-time basis.

The Claimant collected some partial benefits in this case. These benefits are described in the Iowa Code:

Iowa Code §96.3(3). Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

....

Iowa Code §96.19(38)(b). An individual shall be deemed partially unemployed in any week in which either of the following apply: (1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. (2) **The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.**

So here the Claimant worked for Cass & Co, earning full-time wages, and this was her "regular employer." She then lost that job and applied for benefits. Around the time she applied for benefits the Claimant started back with Regis but now only part-time. Thus she was able to collect the partial benefits, charged to Regis, as calculated according to Iowa Code §96.3(3).

Now partial benefits are paid to someone who has lost their regular work and who has found replacement part-time work, but the replacement work pays less money than the regular work in the base period. The idea is that if all an unemployed worker can find is part-time work then the worker should not be punished for taking the work, so long as they still are looking for full time work (assuming the job the worker lost was also full time). Thus partial benefits are paid to supplement the part-time work. Partial benefits are paid for any week in which a claimant is unemployed from her regular work and earns "an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount..." Here for the week in question when the Claimant met this test, she collected partial benefits. For another week she had no wages at all reported. "A week in which an individual performs no work and earns no wages" is a week of "total unemployment." 871 IAC 24.1(39)(c). Thus for that week she was totally unemployed, not partially unemployed.

The only bar to collecting partial benefits as found by the Administrative Law Judge was that the Claimant was still working for the part-time employer whom the Claimant had started work for *after* losing full-time work. The theory used to find the Claimant ineligible was the notion of still being employed in the part-time job. But this theory simply does not apply where the part-time job is one the Claimant got since the

loss of full-time work, and the part-time job is not in the base period. To understand this, let us consider a worker who is working a part-time job for a long time and then has his hours cut. Can he get partial benefits for being partially unemployed from a part-time job? The Department regulations address the situation:

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)(emphasis added). 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 her benefit amount – which benefit amount depends on the wages earned in the *base period*. Thus the fact that the Claimant was still employed on the same hours and wages with this non-base period part-time odd job has no effect whatsoever on her ability to collect partial benefits based on wages earned with her base period employer.

One twist here is that the current odd-job employer and the base period employer are one and the same. Yet there was full-time employment between the two, which employment the Claimant has lost, and only then did she start working part-time for Regis. Thus she clearly was separated from Regis' full-time work. She thus cannot be considered "partially unemployed" for working a reduced-hours work "[w]hile employed at the individual's then regular job..." Iowa Code §96.19(38)(b). The Claimant's "then regular job" would be Cass & Co, or perhaps no one at all, but certainly not the job at Regis she had left months before. Thus the Claimant is partially unemployed, assuming she meets the monetary test, under the odd job provision, not under the work slowdown provision. Iowa Code 96.19(38)(b)(2). This means that she must continue to be available for full-time work, and must continue to actively seek full-time hours in order to collect benefits.

The Administrative Law Judge ruling in this case creates a very odd situation. The Claimant is collecting partial benefits only because she works a job paying less in wages than she had earned in her base period, in particular, less than her benefit amount plus 15 dollars. Iowa Code §96.19(38)(b)(2). The whole concept of partial unemployment during an "odd job" only applies if the Claimant is working at the time she collects benefits. That is the whole point of such partial benefits. If the odd job employer then pays less than the benefit amount why would we stop *partial* benefits from the *regular* employer based only on the continuity of the odd job? This would just discourage taking such part time jobs, the exact opposite of the purpose of the Employment Security Law. Furthermore, an offer of employment in the first five weeks of unemployment can be refused without consequence so

long as the offer is less than 100% of base period wages. Iowa Code §96.5(3)(a)(1)(a). Also an offer of work *prior* to the benefit year (here September 28) can be refused without consequence. If the Claimant had turned down the work, she could be on full benefits. Following the Administrative Law Judge's rule, in many cases, would mean a Claimant would be better off turning down the partial employment and instead collecting full benefits. Such a ruling is bad for everyone as the base period employers are paying for more benefits, the claimant is receiving less money, and the part-time employer is out a worker.

As for the week of full unemployment, the "same hours and wages" rule specifically only means one is not partially unemployed. For weeks where the Claimant does not work and does not get paid then she would be considered totally unemployed, and the regulation would not even apply by its own terms. 871 IAC 24.23(26) ("cannot be considered partially unemployed"). Based on legal and policy concerns we accordingly must reverse the finding that the Claimant was denied benefits effective September 28, 2014 based on her working the same hours and wages from Regis.

*Separation From Full-time Work At Regis:* Since the Claimant quit Regis, worked somewhere else, and only later came back to Regis we clearly have a separation from full-time work at Regis. The Claimant, as a result of our ruling, will draw benefits based on wages earned at Regis, so normally we would have to adjudicate the separation from full-time work at Regis. Here, however, the Claimant earned over 10 times her weekly benefit amount since losing work with Regis, and so could collect benefits no matter what. Iowa Code §96.5(1)(g); §96.5(2)(a). Normally then the only issue would be chargeability of the benefits to Regis. But here the record is absolutely clear that the Claimant quit Regis to work for Cass & Co, and she did work for Cass & Co. Thus the separation would not be disqualifying under the provision allowing benefits to one who quits for the sole purpose of taking other work. Iowa Code §96.5(1)(a). By the same code section, "[b]enefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund." Iowa Code §95.5(1)(a). The upshot is that Regis will not be charged for any benefits that we allow today.

*Other Issues:* We note that the Administrative Law Judge has already remanded the issue of the separation from Cass & Co. Also we note for the Claimant that she must continue to seek full-time work in order to collect benefits, even if working part-time while collecting partial benefits.

## **DECISION:**

The administrative law judge's decision dated November 26, 2014 is **REVERSED ON THE ISSUE OF SAME HOURS AND WAGES**. The Employment Appeal Board concludes that the Claimant was not properly found ineligible by that decision. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. In so holding, we emphasize that the outcome of the Administrative Law Judge's remand on the Cass & Co issue may result in the Claimant not receiving benefits because of that separation. We also find that Regis shall not be charged for benefits allowed today and that the benefits attributable to credits with Regis "shall be charged to the unemployment compensation fund." Iowa Code §95.5(1)(a).

---

Ashley R. Koopmans

---

James M. Strohman

**DISSENTING OPINION OF KIM D. SCHMETT:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety. In particular, I note that the record reveals that the Claimant had started with Regis the first time on a less than regular basis, which then evolved into more hours, and that her second time around she also started this same way. The reduction in hours that caused her to file for benefits is thus completely consistent with the terms of her *base period* employment with Regis.

---

Kim D. Schmett

RRA/fnv