

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

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**JARED S KIEBEL**

Claimant

and

**FAREWAY STORES INC**

Employer

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**HEARING NUMBER: 20B-UI-08091**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**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:** 96.4-3, 96.7-2-A

**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. Two 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:**

In today's decision we reverse the denial of benefits to the Claimant. The unusual nature of this case, however, means that this is not bad news for the Employer.

When a worker remains employed in part-time employment (moonlighting work) but is laid off from other employment, the big issue is whether the worker's earnings exceed the statutory maximum of the weekly benefit amount plus \$14. If the wages do not exceed this, then some benefits are payable. But since the worker is receiving the same employment from the part-time employer then that employer is relieved of charges. None of this has anything to do with availability. The only exception is if the worker "is working to such a degree that removes the claimant from the labor market." 871 IAC 24.23(23). We do not find that this is the case with this Claimant since had he not been laid off at other work he was available to work there.

The question of same hours and wages in cases like this is governed by 871 IAC 23.43(4):

An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges.

Also Code section 96.7(2)(a)(2)(a) provides for a relief of charges for the part-time employer who still employs the worker. This was done here. Rule 24.23(26) is not meant to deny benefits except in those cases where it is claimed that a reduction in hours by the part-time employer at issue is what caused the partial unemployment. In particular, a worker laid off from work, who continues to work part-time at another job, is not disqualified merely because the part-time hours remain the same. The part-time employer is not charged, the wages still count for benefit purposes, and so long as the partial unemployment calculation is satisfied the Claimant is eligible to collect benefits. On the other hand, a worker who is receiving less part-timework, but who understood this to be possible under the contract of hire with the part-time employer, would not ordinarily be considered partially unemployed based on that contemplated reduction in hours.

**DECISION:**

The administrative law judge's decision dated August 25, 2020 is **REVERSED but with no effect on the Employer**. The Employment Appeal Board concludes that the decision of the Administrative Law Judge erroneously concluded that the Claimant was unavailable for work because he remained job attached at some of his part-time employment. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. **The account of Fareway Stores, Inc. shall not be charged** for benefits paid, as already ordered by Iowa Workforce.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn