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

KEYSHAWN TRICE	:	
	:	**HEARING NUMBER:** 21B-UI-12494
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
THE UNIVERSITY OF IOWA	:	
	:	
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: 96.4-3

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 WITH NO EFFECT ON THE EMPLOYER** 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:

This is a moonlighting case. The rule governing this situation is:

> 23.43(4) Supplemental employment.
>
> a. 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. On a second benefit year claim where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

871 IAC 23.43(4). Also Code section 96.7(2)(a)(2)(a) provides for a relief of charges for the part-time moonlighting employer. Rule 24.23(26), cited by the Administrative Law Judge, 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, or having hours reduced, from full-time work, who continues to work another part-time time, is not disqualified merely because the part-time hours remain the same. The part-time employer is not charged, but 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 seeks partial benefits because he is receiving fewer part-time hours from a part-time employer, **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 alone.

On the issue of same hours and 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 he is not unemployed. But this regulation only applies if the claimant is drawing benefits on credits earned in that part-time job, **and** is only becoming eligible for partial benefits because of a reduction in hours at that part-time job. If the credits are being drawn include some other work, and the hours reduction is taking place at the claimant's regular employers, then the claimant is considered partially unemployed so long as he earns sufficiently less than his benefit amount – which benefit amount depends on the wages earned in the *base period.*

What to be done in this situation is set out by the Iowa Supreme Court: "a claimant who is unemployed as a result of a separation from his regular, full-time employment and who continues to meet the other eligibility requirements of availability and actively and earnestly seeks work pursuant to Iowa Code section 96.4(3) may work part-time and still receive benefits as a result of his separation from his full-time employment. However, the weekly earnings must not exceed the weekly benefit amount plus $15." *Welch v. IDES*, 421 N.W.2d 150, 152 (1988). This rule also applies where the claimant is working a reduced schedule at the other employer. In other words, so long as

the Claimant meets the calculation of partially unemployed, and this partial unemployment is caused by a reduction in hours by the other employer(s), then the mere fact that he is also doing the same moonlighting work as he did in his base period does *not* mean he is not partially unemployed. Since the partial unemployment was *not* caused by a reduction in hours by the part-time employer in question, then the cited regulation does not apply.

Looking to the purpose of the law, we can imagine troubling, and not uncommon, scenarios from the Administrative Law Judge's approach. Suppose a worker cannot find a 40-hour-a-week job he can perform. So the worker works 35 hours a week in a 30-hour-a-week job, and also moonlights in a five-hour-a-week job. He continues in both, but is reduced to 10 hours in the regular job. This worker, still attached to two part-time jobs, would be not be eligible for benefits because his hours came from two rather than one job. Such an approach in inconsistent with our obligation to construe the law with an eye towards its beneficial purposes. *Irving v. EAB*, 883 N.W.2d 179, 192 (Iowa 2016)("the Iowa Employment Security Law is to be liberally construed to carry out its humane and beneficial purpose").

Here the Claimant has sufficient credits, if he were to quit the University job, that claimant would be eligible to draw $186 a week instead of $188 a week – and for about the same number of weeks. It would be <u>total</u> reduction in eligibility of $92 spread out over 18 weeks. This is because a quit of part-time supplemental employment only denies the worker the ability to draw on those supplemental credits, and the bulk of the Claimant's credits come from other jobs. Iowa Code §96.5(12). In a situation like this the Administrative Law Judge's approach *could* encourage workers to quit part-time moonlighting jobs in order to draw on the bulk of their credits. Given the purpose and wording of the law we find that this Claimant is partially unemployed, because he has been reduced in hours from the employer who paid the great bulk of wage credits, and he remains employed in supplemental employment. He thus can draw on all credits but the University of Iowa will not be charged since it is providing the same employment as in the base period. Iowa Code §96.7(2)(a)(2)(a). Naturally, the wages earned from the University will offset benefits according to the usual calculations.

<u>*Charging of Employer:*</u> Next we come to the charging of the University. 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. This provision applies to both contributory and reimbursable employers…" Iowa Code §96.7(2)(a)(2). This means that since the University is supplying the Claimant the same employment that the Claimant received during the base period then the University will be relieved of charges on this claim.

DECISION:

The administrative law judge's decision dated December 22, 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.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn

RRA/fnv