

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**NATHAN W MERRILL**  
Claimant

**APPEAL NO: 07A-UI-02995-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**OC: 02/18/07 R: 03**  
**Claimant: Appellant (4)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.7-2-a(2) – Charges Against Employer’s Account  
871 IAC IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits  
Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

Nathan W. Merrill (claimant) appealed a representative’s March 20, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Lutheran Services in Iowa, Inc. (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on April 10, 2007. The claimant participated in the hearing. Marti Swanson appeared on the employer’s behalf and presented testimony from one other witness, Vickie Moore. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant eligible for partial unemployment insurance benefits? If so, is the employer’s account subject to charge? Is the claimant able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 25, 2006. He works part time (27 to 32 hours per week) as a program assistant working with juvenile clients with disabilities out of the employer’s Waterloo office. He generally works three to six hours per day after 3:00 p.m. Monday through Friday and four to seven hours per day every other weekend. As of March 31, 2007, his hourly rate of pay is \$9.35; prior to that date his hourly rate of pay was \$9.00.

The claimant established an initial unemployment insurance benefit year effective February 19, 2006 after a non-disqualifying separation from full time employment from another employer, Covenant Medical Center (CVM). His weekly benefit amount for that benefit year was calculated to be \$319.00. His earnings limit was determined to be \$334.00. He filed four weekly claims after the separation from CVM. He then had a brief period of full time employment with a second employer, Hamilton County Public Hospital (HCPH), from which he had a non-disqualifying separation on or about May 5, 2006. He reopened his unemployment

insurance claim with an additional claim and resumed making weekly claims as of May 13, 2006 through July 29, 2006. He then began a period of full time employment with a third employer, Rent-Way, from which he had a non-disqualifying separation on or about October 4, 2006. He again reopened his unemployment insurance claim with an additional claim and resumed making weekly claims as of October 7, 2006.

After beginning his part time employment with the employer, the claimant continued to file weekly claims for which he reported his weekly earnings. He received partial unemployment insurance benefits for those weeks where his earnings were less than \$334.00. His initial claim year expired February 18, 2007; he then established a second benefit year as of that date. The base period for the current (second) benefit year is from October 1, 2005 through September 30, 2006. Based upon these base period wags, his new weekly benefit amount was calculated to be \$311.00, and his earnings limit was determined to be \$326.00. Since establishing the second benefit year he has continued making weekly claims and reporting his weekly earnings. There are weeks for which the claimant has filed weekly claims in which he earned less than \$326.00.

Since beginning the employment with the employer, the claimant has pursued further education. The claimant has been granted Department Approved Training (DAT) status in a representative's decision issued March 19, 2007 (reference 02).

#### **REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he has separated from his regular job and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

The claimant was separated from his prior regular full-time employers who are his base period employers. He is eligible for partial unemployment insurance benefits for weeks in which his earnings are less than \$326.00 and in which he is otherwise eligible. This current employer is providing the claimant with substantially the same employment as it provided since the initial hire; further, the employer is not a base period employer. Consequently, the employer is exempt from charge for benefits at the very least through the current benefit year. Iowa Code § 96.7; 871 IAC 23.43(4)a.

Furthermore, the normal requirement that the claimant remain able and available for full time employment such as he had during his base period is waived due to his DAT status pursuant to 871 IAC 24.39(2).

#### **DECISION:**

The unemployment insurance decision dated March 20, 2007 (reference 01) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits, provided

he is otherwise eligible for weeks in which he earns less than \$326.00, and the employer's account is exempt from charge for benefits paid to the claimant at least through the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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