

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANE P BEDET**  
Claimant

**APPEAL NO. 09O-UI-11677-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COOPERATIVE ELEVATOR ASSOCIATION**  
Employer

**OC: 03**  
**Claimant: Appellant (2)**

Section 96.4-3 – Availability for Work  
871 IAC 23.43(4) – Supplemental Employment

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated May 12, 2009, reference 03, that concluded the claimant was ineligible to receive partial unemployment insurance benefits because she was working part-time at the same hours and wages as her original contract of hire. A telephone hearing was held on August 31, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Jewell Garms participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

**FINDINGS OF FACT:**

The claimant filed a new claim for unemployment insurance benefits effective February 10, 2008, after her full-time employment with ExoPack LLC ended. She received regular unemployment insurance benefits and then Emergency Unemployment Compensation (EUC) after she had exhausted her regular benefits.

The claimant accepted part-time work from the employer performing cleaning work for several hours per week starting November 23, 2008. She considered the job to be supplemental employment until she could find full-time employment. She reported the wages she had earned from the employer on her weekly claims in November 2008, December 2008, and January 2009, but she did not submit her hours to the employer for payment until March 2009.

Because her benefit year ended, the claimant was required to file a claim for regular unemployment insurance benefits during the week of February 8, 2009. Initially, she was not eligible for unemployment insurance benefits because she had not been paid the \$250.00 in wages for insured work required to qualify for benefits in a second benefit year.

On March 16, 2009, the employer paid the claimant \$320.00 for 32 hours of work performed in November 2008, December 2008, and January 2009. This payment made the claimant eligible for benefits. Her claim filed on February 8, 2009, was based on wages paid by her full-time employment with ExoPack. The claimant has continued to work part time for the employer and has accurately reported her earnings each week.

The claimant has had weeks since filing the claim for unemployment insurance benefits in which she worked less than full time and had earnings less than her earnings allowance.

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

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective February 8, 2009.

Iowa Code section 96.3-3 provides:

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.

The claimant filed for benefits because her regular employer laid her off and her supplemental employment with the employer does not disqualify her from receiving unemployment insurance benefits. The Agency apparently relied on 871 IAC 24.23(26) in denying benefits to the claimant.

871 IAC 24.23(26) provides:

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.

This section does not apply when a claimant is applying for benefits after being laid off by her regular employer and the claimant is based on those full-time wages. It should only be used when the claimant applies for partial unemployment insurance benefits based on wages from her part-time employer who continues to employ the claimant for the same number of hours and wages as established at the time of hire. Instead, this case is governed by 871 IAC 23.43(4)a, which deals with a situation where an individual has supplemental employment in addition to her regular employment.

871 IAC 23.43(4)a provides in part:

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.

The employer's account is not subject to charge for benefits because the employer is providing the claimant with the same employment as agreed to at the time of hire.

**DECISION:**

The unemployment insurance decision dated May 12, 2009, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account will be subject to charge for benefits paid to the claimant.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs