

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MEGAN M GEFFRE**

Claimant

**WESLEY RETIREMENT SERVICES INC**

Employer

**APPEAL NO: 12A-UI-01252-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/11/11**

**Claimant: Respondent (1)**

Section 96.4-3 – Able and Available  
Section 96.19-38 – Partial Unemployment  
Section 96.7-2-a – Relief of Charges

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated January 24, 2012 ,reference 02, that held she was eligible for benefits effective December 11, 2011, because she was still employed part time. A telephone hearing was held on February 27, 2012. The claimant participated. Betty Stone, HR Director, and Margot Voshell, Director, participated for the employer.

**ISSUES:**

The issue is whether the claimant is able and available for work.

The issue is whether the claimant is partially unemployed.

The issue is whether the employer's account should be relieved of benefit charges.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began working for her employer as a part-time, limited home care aide on September 27, 2011. The employer defines this employment as a regularly scheduled employee who works 16-hours or less each week with no guarantee. The claimant was assigned to perform office duty work within her pre-hire availability hours of 5:00 p.m. to 8:00 p.m. with overnight(s). Claimant advised the employer she is a stay-at-home mom whose husband works outside the home.

After two or so weeks, claimant consented to the employer request she work outside the office with home care clients within her work hour availability. She filed for unemployment when she worked only 3-hours the week ending December 17 (earning \$30.00), because the employer called her off from a client who requested it. The employer was able to re-assign claimant other work.

Claimant was off work due to an employer approved vacation for the 2-weeks ending December 31, 2011. A department January 24, 2012 decision disqualified claimant for this period, and it was not appealed.

Claimant worked 4-hours (earning \$40.00) the week ending January 7 and 3-hours (earning \$30.00) the week ending January 14, 2012, and she received partial unemployment benefits. The claimant declined an employer offered client bathing assignment on January 2 for 4-hours due to a lack of training. The employer has not offered further bathing assignments. Claimant is still employed and has earned excessive wages since the week ending January 14, such that she has not received any further benefit.

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

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.19-38 provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which, 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.

An individual shall be deemed partially unemployed in any week in which 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.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The administrative law judge concludes that the claimant is eligible for partial unemployment benefits effective December 11, 2011 as she meets the availability requirements of the law.

Claimant was able and available for work with her assigned client the week ending December 17, so no benefit disqualification is imposed. Claimant had a good cause for declining a bathing assignment on January 2 due to a lack of training and the employer has failed to address the issue further and/or offer further assignments for this reason.

The employer agreed to claimant's availability hours at the time of hire, and she demonstrated flexibility by moving from the office to home care clients. While the employer is within its right to cut claimant work hours under 16 for contract for hire purposes, it makes the claimant partially unemployed for benefit purposes when she earns less than her WBA (\$135.00) plus \$15.00 (or \$150.00).

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, 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, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The employer is not granted a relief of benefit charges as claimant is not receiving the same employment in December, January as she was during the initial, base period of employment.

**DECISION:**

The department decision dated January 24, 2012, reference 02, is affirmed. The claimant is eligible for partial unemployment benefits effective December 11, 2011, and no availability disqualification is imposed. No relief of charges is granted.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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