

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

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**CELIA B BAILEY**

Claimant

and

**CASEY'S MARKETING COMPANY**

Employer

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**HEARING NUMBER: 20B-UI-04352**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**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:** 96.5-1, 96.3-7

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

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 the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

**The Board finds the following additional facts:**

This Claimant worked only part-time for the Employer.

The records of the Department establish that during the quarter that the time the Claimant quit, and for the quarter preceding that quarter, the Claimant earned the bulk of her wage credits with Debbie's Westside Maid-Rite. During the fourth quarter of 2019 she earned \$1,799 with Debbie's and \$778 with the Employer. In the first quarter of 2020 she earned \$1,932 with Debbie's and \$428 with Casey's.

**The Board strikes from the Reasoning and Conclusions of Law any portions inconsistent with the following additional reasoning:**

While we affirm the denial of benefits, we do not affirm the denial of *all* benefits.

Workers who are disqualified for a separation from part-time supplemental work may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other employers to be monetarily eligible and provided they are otherwise eligible. Iowa Code §96.5(12). In no event will such an employer's account be assessed for benefits paid to the claimant (except sometimes for the overpayment which we discuss below). Further, wage credits accrued during the employment shall not be considered in determining benefits for the claimant until the claimant has worked in an been paid for insured work equal to ten times her weekly benefit amount.

As we have found the Claimant's work with Casey's was part-time work. Given these wage records we find it was supplemental. Now during the base period, the situation was that Claimant worked more hours for Casey's and perhaps the Casey's work was not supplement. But we do not key this issue to the base period alone where the situation has changed since then. *See generally, Tuthill v. Iowa Dept. Of Emp. Services*, 408 NW 2d 391 (Iowa App. 1987). Of course, there has to be some sufficient history to show that the situation has changed, but here we have two quarters showing that the Casey's job is supplemental and we think this is enough. The Claimant's quit disqualification, which we have today affirmed, should only disqualify her from drawing on the wage credits earned at Casey's.

Our calculations indicate that the Claimant remains monetarily eligible if the Casey's wages are excluded from her base period. Specifically, it appears that her weekly benefit amount will decrease from \$122 to \$114 and that her maximum benefit amount will decrease from \$3,164.62 to \$1,234.11. But she will be able to draw benefits as limited by these amounts. Now, the Claimant has already drawn \$969.00 over eight weeks. If the weekly amount is reduced to \$114 she should have drawn only \$903 (this is not eight times \$114 because she has reported wages). So the overpayment of regular benefits looks like it will be reduced from \$969.00 to \$63. Since the Employer is the one being charged with this overpayment, and the Employer did not appeal on this issue, then the reduction in the regular benefit overpayment actually benefits the Employer. Meanwhile, the extra \$600 in FPUC is still payable for each of the eight weeks when the Claimant should have been collecting the \$114 in regular benefits. This means that even with the reduction the Claimant would still have gotten the \$3,600 in FPUC. She would not be overpaid in FPUC. The upshot is: Claimant's overpayment is eliminated, and the Employer's liability is reduced by \$903. It is one of those rare cases where everyone should benefit from our ruling.

Notably, with the reduced amounts the Claimant has only a few weeks of benefits left. But she appears to have started earning wages in excess of the benefit amount, and she stopped claiming a couple months ago. Once she earns more than \$1,220 since March 19, 2020 she will once again be able to draw on the Casey's credits. (Casey's will **not** be charged for any benefits drawn after requalification, however). If the Claimant does requalify by earning at least this \$1,220 in covered wages then the amounts for this benefit year will be restored. Although we can do the calculation we nevertheless will refer the matter to Iowa Workforce to make the official calculation. Again, one way or the other, the Employer will not be charged **except for** the overpayment of weeks already collected. As we indicated this overpayment will also be reduced, to \$63, but we again refer the matter to Iowa Workforce for the official calculation.

The decision of the Administrative Law Judge is **MODIFIED IN THE CLAIMANT'S FAVOR**. The Claimant is allowed benefits to the extent that she is eligible based on credits earned with other employers, and only denied the ability to draw on credits earned with Casey's. FPUC is payable on these benefits.

Accordingly, the Board also **REFERS** this matter to the Iowa Workforce Development, Benefits Bureau to address whether the Claimant is otherwise eligible for benefits based on wage credits other than those from Casey's, and if so then for a recalculation of benefits payable based on this decision. The overpayment chargeable to the Employer should also be recalculated.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn

RRA/fnv