

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY M OLMSTEAD**  
Claimant

**APPEAL NO. 12A-UI-03779-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NELLIS MANAGEMENT COMPANY**  
Employer

**OC: 08/28/11**  
**Claimant: Appellant (2)**

Section 96.4-3 – Eligibility for Benefits  
Section 96.19-38-b – Partial Unemployment

**STATEMENT OF THE CASE:**

Mary M. Olmstead filed a timely appeal from an unemployment insurance decision dated April 11, 2012, reference 05, that denied unemployment insurance benefits to her upon a finding that she was not an unemployed individual. After due notice was issued, a telephone hearing was held April 25, 2012 with Ms. Olmstead participating. Andy Logue participated for Nellis Management Company. The administrative law judge takes official notice of agency benefit payment records and wage records.

**ISSUE:**

Is the claimant eligible for unemployment insurance benefits?

**FINDINGS OF FACT:**

Mary M. Olmstead filed an original claim for unemployment insurance benefits during the week of August 28, 2011 after the end of her full-time employment with Pathways Behavioral Services. She continues to seek full-time employment but has accepted a part-time position at a Long John Silver/A & W Restaurant operated by Nellis Management Company. She is a part-time employee who works all scheduled hours. She continues a work search for full-time employment and, if necessary, would resign from the part-time job in order to accept suitable full-time employment.

Ms. Olmstead began working for Nellis Management Company on January 18, 2012. Her wages from this employer are not being used to compute her unemployment insurance benefits. Benefits paid to Ms. Olmstead during her present benefit year are not being charged to Nellis Management Company.

**REASONING AND CONCLUSIONS OF LAW:**

The question in this case concerns the unemployment insurance consequences of an individual with a history of full-time employment accepting part-time employment while continuing to seek

new full-time employment. Given the facts of the present case, the administrative law judge concludes that the claimant is entitled to receive partial unemployment insurance benefits but that these benefits should not be charged to the account of Nellis Management Company.

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".

The first test of eligibility is that an individual must be unemployed through no fault of his or her own. An individual may be either totally unemployed or partially unemployed. See Iowa Code section 96.19-38. The evidence here establishes that the claimant's present unemployment insurance benefits are based on full-time employment. She is now working part-time hours and earning less than the sum of her weekly benefit amount plus \$15.00. The administrative law judge concludes that the claimant is partially unemployed because of the full-time wages in her base period.

An individual also must be able to work. It is obvious that Ms. Olmstead is able to work because she is working all hours made available to her. She is working less than 40 hours per week leaving her available for additional unemployment. Finally, her sworn testimony establishes that she continues to seek full-time employment and would accept suitable employment if offered. From this the administrative law judge concludes that the claimant meets the eligibility requirements to receive unemployment insurance benefits.

Nellis Management Company is not in any way responsible for Ms. Olmstead's unemployment. As a matter of fairness, it should not be charged with benefits paid to Ms. Olmstead during this benefit year. According to the Employment Security Law, it is not being charged for benefits because the wages it has paid to Ms. Olmstead were not paid during the base period upon which her benefits are based.

Should Ms. Olmstead open a new benefit year on or after August 26, 2012, and should her benefits at that time be based solely on wages from this employer and other part-time work, the agency will reassess Ms. Olmstead's eligibility.

**DECISION:**

The unemployment insurance decision dated April 11, 2012, reference 05, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. No benefits shall be charged to this employer during the claimant's present benefit year.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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