

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARCY E GLANDON
Claimant

APPEAL NO: 12A-UI-11500-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 08/19/12

Claimant: Respondent (4/R)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

ABCM Corporation (employer) appealed a representative's September 14, 2012 decision (reference 02) that concluded Darcy E. Glandon (claimant) was qualified to receive unemployment insurance benefits and that the employer's account could be subject to charge. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on October 18, 2012. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. The claimant responded to the hearing notice and indicated that she would participate in the hearing. When the administrative law judge contacted the claimant for the hearing, she agreed that the administrative law judge should make a determination based upon a review of the available information, which would include a modification of the representative's decision.

FINDINGS OF FACT:

After a prior period of employment with the employer which ended on or about March 31, 2012, the claimant most recently began working for the employer on May 17, 2012, working part time on weekends as a certified nursing aide (CNA). Since on or about April 1, 2012, she was also working full time at another employer, Country Kitchen.

The claimant established an unemployment insurance benefit year effective August 19, 2012 during about a two-week period of layoff from Country Kitchen. Her weekly benefit amount was calculated to be \$194.00. She continued to work her part-time hours at the employer, and in fact picked up some additional hours during those weeks.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and whether the employer's account is subject to charge. The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she has been permanently or temporarily separated from one employer and earns less than her

weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b; see also Iowa Code § 96.3-3.

If the claimant had other part-time employment and remains in that employment, she continues to be eligible for benefits as long as she is receiving the same employment from the part-time employer that she previously received. However, under those circumstances the part-time employer's account is relieved of benefit charges. 871 IAC 23.43(4)a.

The claimant was temporarily separated from her current regular full-time employer and continued to work for her part-time employer. The employer was providing the claimant with substantially the same employment as it had provided since she became employed on May 17, 2012. Consequently, the claimant is qualified to receive at least partial unemployment insurance benefits effective August 19, 2012, provided she was otherwise eligible.

To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting her wages from all employers earned (not paid) for that week; the amount of her eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

Under rule 871 IAC 23.43(4)a the employer is exempt from charge for benefits paid to the claimant as long as it continues to provide the claimant with at least the same part-time employment it has provided since May 17, 2012.

An issue as to whether the claimant initially underreported wages and as a result was overpaid unemployment insurance benefits for the week ending September 1, 2012 arose as a result of the review of the available information. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The unemployment insurance decision dated September 14, 2012 (reference 02) is modified in favor of the employer. The claimant is eligible for partial unemployment insurance benefits, provided she is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant. The matter is remanded to the Claims Section for investigation and determination of the underreported wage and potential overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs