

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

EMILY RIES

Claimant

and

**MELROSE RETIREMENT COMMUNITY
LLC**

Employer

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HEARING NUMBER: 20B-UI-04326

**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: 96.4-3, 96.19-38B

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

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 it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** but with no effect on the employer as set forth below.

FINDINGS OF FACT:

The Administrative Law Judge's findings of fact are adopted by the Board as its own.

REASONING AND CONCLUSIONS OF LAW:

We view this as a moonlighting case. The Claimant remained in the employ of the base period employer with whom she earned the least amount of wage credits. She was laid off from *all other* base period employers. We think this is very closely akin to a worker who has a full-time job, and a moonlighting job, and is laid off from the full time job. That worker is allowed benefits, but the moonlighting employer is not charged for them. The rule governing this situation is:

23.43(4) Supplemental employment.

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. On a second benefit year claim where the individual worked only for the part-time employer during the base period and the lag quarter, the part-time employer shall not be considered for relief of benefit charges with the onset of the second benefit year. It is the part-time employer's responsibility to notify the department of the part-time employment situation so the department may render a decision as to the availability of the individual and benefit charges. The individual is required to report gross wages earned in the part-time employment for each week claimed and the wages shall be deducted from any benefits paid in accordance with Iowa Code section 96.3(3).

871 IAC 23.43(4). Also Code section 96.7(2)(a)(2)(a) provides for a relief of charges for the part-time moonlighting employer. Rule 24.23(26), cited by the Administrative Law Judge, is not meant to deny benefits except in those cases where it is claimed that a reduction in hours by the part-time employer at issue is what caused the partial unemployment. In particular, a worker laid off from full-time work, who continues to work part-time work, is not disqualified merely because the part-time hours remain the same. The part-time employer is not charged, but the wages still count for benefit purposes, and so long as the partial unemployment calculation is satisfied the Claimant is eligible to collect benefits. On the other hand, a worker who is receiving fewer part-time hours, but who understood this to be possible under the contract of hire with the part-time employer, would not ordinarily be considered partially unemployed **based on** that contemplated reduction in hours alone.

Looking to the purpose of the law we can imagine troubling, and not uncommon, scenarios from the Administrative Law Judge's approach. Suppose a worker cannot make ends meet on 40 hours a week, or cannot find a 40 hour a week job she can perform. So the worker works 60 hours a week in two part-time 30-hour-a-week jobs. She continues in one, but is reduced to 15 hours, and gets laid off from the other. This hard-working worker, still attached to a regular part-time job, would be not be eligible for benefits because her hours came from two rather than one job. Such an approach is inconsistent with our obligation to construe the law with an eye towards its beneficial purposes. *Irving v. EAB*, 883 N.W.2d 179, 192 (Iowa 2016) ("the Iowa Employment Security Law is to be liberally construed to carry out its humane and beneficial purpose").

Here the Claimant has sufficient credits, if she were to quit her supplemental employment at Melrose, that she could draw \$190 a week, for about 22 weeks. This is because a quit of part-time supplemental employment only denies the worker the ability to draw on those supplemental credits, and the bulk of the Claimant's credits come from the jobs she was laid off from. Iowa Code §96.5(12). Her benefits otherwise would be for \$255 a week for about 21 weeks. In a situation like this the Administrative Law Judge's approach *could* encourage workers to quit part-time jobs in order to draw on the bulk of their credits. Given the purpose and wording of the law we find that this Claimant is partially unemployed, because she has been laid off from the employers who paid the bulk of her wage credits, and she remains employed in supplemental employment. She thus can draw on all her credits but Melrose Retirement Community will not be charged since it is providing her the same employment as in her base period. Iowa Code §96.7(2)(a)(2)(a). Naturally, the wages she earns from Melrose will offset benefits according to the usual calculations.

DECISION:

The administrative law judge's decision dated June 22, 2020 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was partially-unemployed during the period in question although she remained working for this part-time employer on the same basis as in the base period. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

Melrose Retirement Community will not be charged **so long as** it is providing Claimant the same employment as in her base period. Iowa Code §96.7(2)(a)(2)(a).

Ashley R. Koopmans

James M. Strohman

Myron R. Linn

RRA/fnv