

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

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<b>BECKY CONNER</b>	:	
	:	<b>HEARING NUMBER: 21B-UI-11398</b>
Claimant	:	
	:	
and	:	<b>EMPLOYMENT APPEAL BOARD</b>
	:	<b>DECISION</b>
<b>GENESIS DEVELOPMENT</b>	:	
	:	
Employer	:	

**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**

**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** as set forth below.

**FINDINGS OF FACT:**

The claimant worked for the Genesis Development from September 26, 2005, through October 26, 2019, as a full-time supported community living team leader. As of October 26, 2019, all of Genesis Development's services were transferred to Imagine the Possibilities. Imagine the Possibilities agreed to hire the Genesis Development's staff. The claimant started working full-time for Imagine the Possibilities immediately after leaving Genesis. Starting with the week ending April 11, 2020 the Claimant's hours with Imagine the Possibilities were reduced due to the Pandemic.

**REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

...

24.23(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

“The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4.” Iowa Code §96.6(2).

Here the Claimant has proven that her hours were reduced at Imagine the Possibilities. Based on the record the ruling that the Claimant is working full-time hours is incorrect. We reverse the finding that the Claimant is not available to work, and thus unlock the claim for benefits.

We note that Genesis Development and Imagine the Possibilities are both base period employers, with Genesis having \$9,326 of chargeable credits reported, and Imagine reporting wages yielding \$1,621.33 in chargeable credits. Claimant's maximum benefit amount, however, is \$9,620. As Imagine is more recent its credits would be charged off first, and then Genesis would be subject to charge up to a maximum of the remaining \$7,998.67. Imagine the Possibilities did not protest.

We note further that the Administrative Law Judge remanded the question of the Claimant's separation from **Genesis Development**. The Administrative Law Judge who held the hearing erroneously told the parties that the separation issue would concern Imagine the Possibilities. But the Claimant is not separated from Imagine the Possibilities, so of course the separation remand is not about Imagine the Possibilities. This is a rather technical issue that may nevertheless affect the employers here. Looking ahead to the remand we imagine the possibilities.

Genesis and Imagine are two different employers. The Claimant stopped working for Genesis back in 2019 and started working for Imagine. The law regards this as a job separation from Genesis and the remand is to determine whether it was a quit or layoff. If it is a layoff then benefits will be allowed and Genesis will be subject to charge. If the Genesis separation was a quit then it likely would not be disqualifying under the “quit for another job” provision of Iowa Code §96.5(1)(a). In that kind of case benefits are allowed but the state fund would be charged for the Genesis share of credits, not Genesis. In fact, even if it was a disqualifying quit at Genesis, the Claimant has clearly requalified through her earnings at Imagine. This means even if the quit was disqualifying the Claimant would be allowed, but Genesis would not be charged. Put together this means if it's a layoff from Genesis, benefits would be allowed and Genesis charged, but if it's a quit from Genesis then it is very likely benefits will still be allowed but Genesis **not** charged. So the thing that is likely at stake in the remand: will Genesis be charged? We note that *if* the experience rating of Genesis was transferred to Imagine (and we don't know if it was) then this charging issue could affect Imagine the Possibilities.

#### **DECISION:**

The administrative law judge's decision dated December 16, 2020 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not fully employed during the weeks in question, and should be allow unemployment benefits for any week she was totally or partially unemployed during her benefit year. Accordingly, **benefits are allowed** for any week the Claimant was totally or partially unemployed during her benefit year and during which week the Claimant was otherwise eligible.

The remand on the separation remains in place. The issue on remand is the separation from Genesis.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn