

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYANN B LESTER
Claimant

APPEAL NO: 11A-UI-16617-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 11/27/11

Claimant: Appellant (4)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Tyann B. Lester (claimant) appealed a representative's December 23, 2011 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with ABCM Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 29, 2012. The claimant participated in the hearing. Rayne Nolte appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant employed by the employer for less than her usual hours and wages and eligible for full or partial unemployment insurance benefits?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently returned to working for the employer on June 22, 2011. She initially worked on an on-call basis as a certified nursing aide (CNA) in the employer's assisted living facility. Since February 1, 2012, she began working on a part-time basis, working Thursdays and every third weekend. She remained in that pattern as of the date of the hearing.

The claimant had a prior full-time position with another employer, Iowa Sports Supply Company, which ended in mid-June 2011, shortly before the claimant sought to return to work with the employer. She did obtain new employment with a new employer, Croell Redi-Mix, Inc., as of July 6, 2011, working about 20 to 34 hours per week. She was laid off from that employment for the winter as of November 28. She established an unemployment insurance benefit year

effective November 27, 2011, seeking partial unemployment insurance benefits for the difference between her earnings with the employer and her unemployment insurance benefits. Her weekly benefit amount was set as \$338.00. There have been weeks since establishing her claim for unemployment insurance benefits in which her earnings have been less than \$353.00 (\$338.00 + \$15.00).

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant is eligible for partial unemployment insurance benefits. The unemployment insurance law provides that a claimant is deemed partially unemployed 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.

The claimant was separated from her regular full-time employer and her subsequent primary employer. Consequently, the claimant is qualified to receive at least partial unemployment insurance benefits effective November 27, 2011, provided she was otherwise eligible. If the claimant has other part-time employment and remains in that employment and continues to receive at least the same level of employment from the part-time employer as previously had been the case, the part-time employer's account is relieved of benefit charges. 871 IAC 23.43(4)a. The employer here has been providing the claimant with at least the same level of employment as it previously provided.

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 level of part-time employment it has been providing.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. A claimant must remain available for work on the same basis as when her base period wages were accrued. 871 IAC 24.22(2)f. There may have been some days in January and February 2012 where the claimant had personal conflict with days she would have otherwise have worked for the employer. However, the basis for availability is not her part-time employment with the employer, but her prior full-time and nearly-full-time employment with the other employers. "Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work." 871 IAC 24.22(2)h. The claimant was available for the major portions of these weeks, and so is considered available for work.

DECISION:

The unemployment insurance decision dated December 23, 2011 (reference 02) is modified in favor of the claimant. 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. She is able and available for work.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw