

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

CASEY L HAGANS

Claimant

and

CENTRAL IOWA KFC INC

Employer

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HEARING NUMBER: 20B-UI-10026

**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: 96.19-38A&B,96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. Two 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 IN PART AND AFFIRMS IN PART** 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:

In today's decision we reverse the denial on benefits to the Claimant based on the "same hour and wages" regulation. The unusual nature of this case, however, means that this is not bad news for the Employer.

In this case the Claimant had his part-time hours reduced by KFC for reasons related to his own conduct. He then took a full-time job with another employer, Pizza Hut. He remained employed, on a part-time on call basis, with KFC. Then Pizza Hut reduced his hours for non-disqualifying reasons. The Claimant only then filed for benefits. The Administrative Law Judge denies the Claimant benefits because he continued to work for the Employer on a very part-time basis. We reverse and grant benefits at least until the date of the Claimant

separation. We remand on the issue of the separation from KFC, and non-charge KFC for benefits payable until that date.

Partial benefits are described in the Iowa Code

Iowa Code §96.3(3). Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph “b”, and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual’s weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual’s weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

....

Iowa Code §96.19(38)(b). An individual shall be deemed partially unemployed in any week in which either of the following apply: (1) While employed at the individual’s then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual’s weekly benefit amount plus fifteen dollars. (2) **The individual, having been separated from the individual’s regular job, earns at odd jobs less than the individual’s weekly benefit amount plus fifteen dollars.**

So here the Claimant worked for a Pizza Hut, on a full-time basis, and this is the “regular employer” he was working for **at the time he became unemployed**. He lost that job and applied for benefits. He continued to work for KFC, but very part-time. Thus he was able to collect the partial benefits as calculated according to Iowa Code §96.3(3).

Now partial benefits are paid to someone who has lost their regular work and who has found replacement part-time work, but the replacement work pays less money than the regular work in the base period, or who continues to be employed in a moonlighting job. The idea is that if all an unemployed worker can find is part-time work, or the worker continues to be employed in a part-time job, then the worker should not be punished for having that work, **so long as they still are looking for full time work**. Thus partial benefits are paid to supplement the part time work. Partial benefits are paid for any week in which a claimant is unemployed from his regular work and earns “an amount equal to the individual’s weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual’s weekly benefit amount...” Here for the weeks in question when the Claimant met this test he collected partial benefits.

The only bar to this as found by the Department was that the Claimant was still working for the part-time moonlighting employer. The theory used to find the Claimant ineligible was the notion of still being employed in the part-time job. But if the Claimant is unemployed due to the loss of a full-time job then the claimant is considered partially unemployed so long as he earns sufficiently less than his benefit amount – which benefit amount depends on the wages earned in the base period. 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. At base the Claimant’s period unemployment immediately prior to filing for benefits was caused by the loss of the full-time Pizza Hut job. He is thus unemployed, and must report the wages from his moonlighting job. See *McCarthy v. Iowa Employment Sec. Commission*, 76 N.W.2d 201, 247 Iowa 760 (Iowa 1956); *Welch v. IDJS*, 421 N.W.2d 150 (Iowa app. 1998).

Perhaps the clearest way to look at this is that if the Claimant had been fired for misconduct by KFC back in November of 2019, he would not be denied benefits because he had earned 10 times his weekly benefit amount with Pizza Hut, and then was laid off from Pizza Hut. In that scenario the Claimant would get benefits but KFC would not be charged. Why then would we deny benefits because the Claimant kept working for KFC and then *also* got a job with Pizza Hut? “The effect of this rationale is to reward the idle and punish the ambitious.” *Welch* at 154.

Although the Claimant worked reduced hours at KFC compared to his base period, this was because KFC reduced hours for cause (although we do not address misconduct since that is not relevant). Given the fact that the Claimant has requalified, and given Iowa Code §96.7(2)(a)(2)(a) we hold that KFC **may not be charged** for any of the benefits we allow today.

Finally, the record shows that the Claimant may be separated from KFC at this point. Since KFC is his only base period employer if that separation were disqualifying this would deny all regular state benefits to the Claimant even if we treated the KFC work as supplemental. Thus the issue of possible separation from KFC must be resolved. We **remand** this matter to Iowa Workforce, Benefits Bureau to determine whether the Claimant is separated from KFC, and if so when, and whether that separation is disqualifying.

DECISION:

The administrative law judge’s decision dated October 8, 2020 is **REVERSED**.

At this time the Claimant is allowed benefits from March 29, 2020. The Employer will not not be charged for benefits paid between March 29, 2020 and the date, if any, of Claimant’s separation from employment. The Claimant must report his wages earned.

The Board **REMANDS** this matter to Iowa Workforce, Benefits Bureau to determine whether the Claimant is separated from KFC, and if so when, and whether that separation is disqualifying. If there is a disqualifying separation the Claimant would still be allowed benefits between March 29, 2020 and the date of separation. The Employer would not be charged for the benefits paid in that period. If there is no disqualifying separation the Employer would still not be charged for benefits paid between March 29, 2020 and the date of separation, if any.

Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge’s decision in this case is vacated and set aside. Depending on the outcome of the remand on the separation issue there may be another overpayment assessed.

Ashley Koopmans

James M. Strohman

Myron Linn