

**BEFORE THE
EMPLOYMENT APPEAL BOARD
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
eab.iowa.gov**

ZEYAD A HAMMADI

Claimant

and

QUEST DIAGNOSTICS INC

Employer

: **APPEAL NUMBER: 24B-UI-02300**
: **ALJ HEARING NUMBER: 24A-UI-02300**
:
: **EMPLOYMENT APPEAL BOARD**
: **DECISION**
:
:
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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: 96.1A 24.23-26

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:

Zeyad A. Hammadi (“Claimant”) began working for Quest Diagnostics, Inc. (“Employer”) in 2018. He has worked on-call for the Employer since he started. The Claimant last earned wages from the Employer in December 2023, when he completed on-line training.

The Claimant filed for unemployment insurance benefits effective April 21, 2024. The administrative record shows the Claimant’s wages earned each quarter during his base period:

	Q4 of 2022	Q1 of 2023	Q2 of 2023	Q3 of 2023
Per Mar Security	296	970	419	
Employer	120		30	22
Lucas County Health Center		1409	3628	

Iowa Workforce Development (“IWD”) found the Claimant was eligible for benefits based on his employment with Per Mar Security (“Per Mar”). IWD found Per Mar was supplemental employment and removed Per Mar’s wages from the Claimant’s base period.

IWD has not yet addressed the nature of the Claimant’s employment relationship with Lucas County Health Center (“LCHC”) (account number 102706) and whether his separation from that employer is qualifying. LCHC, for purposes of this decision, is the Claimant’s regular employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3)a provides, in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c".

Iowa Code section 96.1A(37) states, in relevant part:

"Total and partial unemployment".

...

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.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

(Emphasis added.) The law defines an odd job as “temporary work with an employment unit other than the claimant’s regular employing unit.” 871 IAC 24.1(86). In the relevant calendar year, the Claimant earned less than \$200 in wages with the Employer. Additionally, at the time he earned the wages with the Employer, he did not have regular employment. Based on the Claimant’s base period, any wages earned with the Employer are for odd jobs; therefore, he can still meet the definition of either totally or partially unemployed based on his employment with this Employer.

871 IAC 24.22(2)(i) states:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described

in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

i. On-call workers.

(1) Substitute workers (i.e., post office clerks, railroad extra board workers), who hold themselves available for one employer and who do not accept other work, are not available for work within the meaning of the law and are not eligible for benefits.

(2) Substitute teachers. The question of eligibility of substitute teachers is subjective in nature and must be determined on an individual case basis. The substitute teacher is considered an instructional employee and is subject to the same limitations as other instructional employees. As far as payment of benefits between contracts or terms and during customary and established periods of holiday recesses

is concerned, benefits are denied if the substitute teacher has a contract or reasonable assurance that the substitute teacher will perform service in the period immediately following the vacation or holiday recess. An on-call worker (includes a substitute teacher) is not disqualified if the individual is able and available for work, making an earnest and active search for work each week, placing no restrictions on employment and is genuinely attached to the labor market.

(3) An individual whose wage credits earned in the base period of the claim consist exclusively of wage credits by performing on-call work, such as a banquet worker, railway worker, substitute school teacher or any other individual whose work is solely on-call work during the base period, is not considered an unemployed individual within the meaning of Iowa Code section 96.19(38) "a" and "b." An individual who is willing to accept only on-call work is not considered to be available for work.

871 IAC 23.43(4)(a) defines supplemental employment and when an Employer may be relieved of charges by stating:

(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).

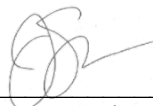
The Claimant is still employed with the supplemental Employer as an on-call worker. However, there is no indication that **all** of the work the Claimant performed in his base period was for on-call work. As discussed above, the employment itself is supplemental to the Claimant's regular employment with LCHC. Therefore, the Claimant is eligible for benefits based on this employment and the Employer's account shall be relieved of charges.

The issues of whether the Claimant worked for LCHC as a full-time, part-time or on-call worker has not been adjudicated by IWD. Additionally, whether the Claimant's separation from LCHC qualifies him for benefits has not yet been determined.

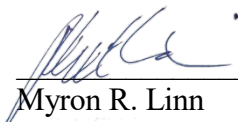
DECISION:

The administrative law judge's decision dated April 4, 2024 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was employed in supplemental employment. Accordingly, benefits are allowed and the Employer's account shall not be subject to charge.

The Employment Appeal Board **REMANDS** the issues of whether the Claimant worked for LCHC as a full-time, part-time, or on-call worker and whether the Claimant's separation from LCHC qualifies him for benefits back to the Benefits Bureau to conduct a fact-finding interview with the relevant parties.



James M. Strohman



Myron R. Linn



Ashley R. Koopmans

SRC/mes

DATED AND MAILED June 25, 2024