

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARLA J NAIRN**  
Claimant

**APPEAL NO: 12A-UI-01469-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRESTVIEW MANOR LTD**  
Employer

**OC: 01/22/12**

**Claimant: Respondent (1/R)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

Crestview Manor, Ltd. (employer) appealed a representative’s February 7, 2012 decision (reference 01) that concluded Marla J. Nairn (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on March 2, 2012. The claimant participated in the hearing. Ann Root 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.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on September 26, 2011. She worked part time as a housekeeper in the employer’s long-term care nursing facility.

Prior to about January 15, 2012, the claimant had been working an average of 32 hours per week. As of about that date, at the employer’s choice for business purposes the claimant’s schedule was reduced to an average of 30 hours per week (60 hours per pay period). As a result of this reduction, the claimant established an unemployment insurance benefit year effective January 22, 2012 and began seeking partial unemployment insurance benefits for weeks where her gross earnings were less than her weekly benefit amount of \$400.00 plus \$15.00.

Separately, on February 21, 2012 the claimant gave the employer notice of resignation; her last day of work would be March 16, 2012. The administrative law judge notes that the last week for which the claimant filed a weekly claim was the week ending March 17, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if she is not employed at her usual hours and wages and earns less than her weekly benefit amount plus \$15.00 in other employment. Iowa Code §96.19-38-b.

Beginning on or about January 15, 2012, the employer was not providing the claimant with substantially the same employment as it had previously provided. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of her claim effective January 22, 2012, provided she was otherwise eligible. 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2010 and ended September 30, 2011. The claimant began her employment with the employer just before the end of this period, but the employer did not pay any wages to the claimant during this time; therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

An issue as to whether there was a disqualifying separation from employment effective for benefit weeks starting March 18, 2012 arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

**DECISION:**

The unemployment insurance decision dated February 7, 2012 (reference 01) is affirmed. The claimant is eligible for partial unemployment insurance benefits for the period of January 22 through March 17, 2012. The employer's account is not subject to charge in the current benefit year. The matter is remanded to the Claims Section for investigation and determination of the separation issue for benefit weeks starting on and after March 18, 2012.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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