Message: RE: Welch Quits

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RE: Welch Quits

From Wise, Steve [IWD]

Date Wednesday, June 19, 2013 8:27 AM

To Stephenson, Randall [IWD]; Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]

Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

I won't repeat my analysis about why the Iowa Supreme Court decision in Taylor—which disqualified a claimant who quit a non-base period full-time job after 6 days of work—forecloses treating a claimant who chooses to make a full-time job a short-term job by quitting after a few days or a few weeks as quitting a part-time job under Welch. My view is whether the claimant quits the full-time job within a week or four weeks is up, the claimant is disqualified unless there's good cause for quitting the job.

In terms of the coming to a consensus about factors to look at to decide if the job is full or part-time, I would think we could come to a consensus on those factors.

I do believe that if claimants aren't advised that they can quit a full-time job without consequence within four weeks or some similar period this is not going to create a lot of appeals.

From: Stephenson, Randall [IWD]
Sent: Monday, June 17, 2013 2:29 PM
To: Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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We can strive for uniformity and consensus but cannot be ruled by it. The factual determination of whether the employment is part-time or full-time depends on a number of factors as outlined by the ALJ responses and it should be ruled on a case by case basis.

The fact-finders should be told that if they decide there is a voluntary quit of part-time employment without good cause attributable to the employer and claimant has sufficient wage credits to be eligible for UI benefits, then the employer is relieved of liability and the claimant draws UI benefits based on those wage credits. This decision will result in very few appeals.

From: Mormann, Marlon [IWD]
Sent: Thursday, June 13, 2013 1:42 PM
To: Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I will follow a consensus created by my peers. I think we need uniformity.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Walsh, Joseph [IWD]
Sent: Thursday, June 13, 2013 1:15 PM
To: Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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The debate seems to have died down, so I will take another crack although I plan no further ill-fated attempts at humor.

To me there are a couple of takeaways so please allow me to see if there is any agreement on these takeaways:

1. **Historically, this does not come up very much (although if FF starts denying more quits, it logically will come up).** And most cases neither party even really knows the significance or disputes it. (That is the part we all agree upon, I keep pushing to say we need a unified standard because I do not think it is good enough to say it doesn't come up, so let's decide it on a case by case basis).
2. **It is hard to have a unified standard if there is no rule. Hard but not impossible.** Alas this was the problem when Welch came down in 1988. If we make up a new standard and ask everyone to follow it, we will pretty much be doing the same thing now – making up a policy for claims to follow – that we did then; it will just be a standard that ALJs agree with (because we had input). We have to have some type of specific criteria *especially for FF* or the variation will be too disparate. The ALJs have to follow the law not policies. (Everyone should know, however, that rules are hard and they are highly politicized; there are good reasons to avoid doing rules).

Here is the question. If we lock a group of people in a room (perhaps the makeup of the group chosen by the Director), can we come up with a consensus written Claims Training Policy that we can all *generally* agree to follow? Or am I still going to have the Lone Ranger using her/his own method?

The Director has clearly stated that no Judge will ever be told how to decide a specific case. But I think if we can agree to agree to a standard which provides some level of deference to what I am calling a "Claims Training Policy" which applies *Welch* when we will then apply expertise and judicial experience, then I think we will have made a huge step.

From: Wise, Debra [IWD]
Sent: Wednesday, June 12, 2013 10:07 PM
To: Walsh, Joseph [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD];

Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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What constitutes part-time work or employment?

General information:

First, I know of no legal guidelines that determines whether an employee is a part time or full time employee. According to the Bureau of Labor Statistics, working part-time is defined as working between 1 and 35 hours per week. (Question – does this mean if an employee works 36 hours a week, they work full time?) The Department of Labor uses a definition of 34 or fewer hours a week as part-time work, but this definition is only used to gather statistical information. Tthe Fair Labor Standards Act (FLSA) does not define full-time employment or part-time employment.

A part time employee traditionally worked less than a 40 hour work week. Today some employers consider employees as full time if they work 30, 32, or 36 hours a week. The definition of part time employee varies from organization to organization. Whether a job is part time or full time can be and is often defined by the employer's policy and can be stated in an employee handbook.
Some employers distinguish between full time and part time employees when they are eligible for benefits such as health insurance, paid time off (PTO), paid vacation days, and sick leave. Some organizations enable part time employees to collect a pro-rated set of benefits. In other organizations, part time status makes an employee ineligible for any benefits. With the new federal health law an employer may be responsible for providing health insurance to employees who work 30 hours a week or more (if all other requirements are met).

I agree with Lynette, that typically whether a person works part time or full time is not usually an issue (at least in the cases I receive.). For ALJs and claims to have a standard guideline – a written rule needs to be developed because part time work or employment has different meanings for different employers or businesses. While working a certain number of hours a week is a great guideline and eliminates discretion, if this is the criteria from distinguishing part time from full time we need to be upfront about this and state this in a rule.

What have I done in the past or should have done when this is an issue:

If the claimant or employer states the claimant works part time find out how many hours a week the claimant generally works and is this customary in that business.

Ask if the employer's policy defines part time work or employment and full time employment. An employer may consider full time employment as something less than 40 hours a week and in some instances more than 40 hours a week.

Ask if there is a minimum number of hours employees must work before they are eligible to receive benefits. Is an employee eligible for more benefits if they work more hours?

There are probably other questions that can be asked when deciding if an employee for a particular employer works part time or full time, but these are the ones that can be used as a starting point.

I do not believe the statues or regulations provide any one-week trial period.

From: Walsh, Joseph [IWD]
Sent: Wednesday, June 12, 2013 2:20 PM
To: Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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Devon has provided a rebuttal to many of the statements I made about the history and policy considerations. I have no problem with this even though I specifically asked to focus the debate on the future. The main thing is, I don't want to get bogged down in criticizing past Directors and their directions to UI Legal Counsel. I think it makes this whole debate more personal than it needs to be and I find it kind of unnecessary. I think we can all agree at least that prior administrations were faced with the difficult task of implementing *Welch* with very little guidance and whether we agree with how it was done or not, that is the backdrop of the debate.

Also as a point of personal preference I would also ask that we avoid colored responses to one another's arguments. I just hate trying to follow those types of discussions.

The debate at this point should be simple. All I want to know right now from each of the Judges is: How do you determine to determine what is part-time work under *Welch*? It is fine to say it is a case-by-case basis, but there still has to be a standard that guides our interpretations.

From: Lewis, Devon [IWD]
Sent: Wednesday, June 12, 2013 11:56 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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Seeing only one response so far...(Excerpts from JW's e-mail in black. DML comments in red.)

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

"if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36?

I'm not sure I understand this hypothetical – if he were working that many hours he would not be A&A either by hours or wage reduction from benefits.

The sole issue we are discussing is:
Should Claims allow benefits per Iowa Admin. Code r. 871-24.27 for those Cs who quit a FT job held less than four weeks?

I believe the Director has indicated the answer on its face is "no" and that to determine what the dividing line is between full- and part-time employment requires specific factual inquiry. (See attached list of questions for FF guidance I sent Saturday with additions and edits on Monday.)

extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance.

The *Taylor* Court gave specific guidance and directive in 1985 that there is no trial period of unemployment allowance for someone who works FT for six days unless the Legislature specifies otherwise. It has not.

A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems.

I do not recall any such information or request for ALJ input from any previous Director. Does anyone else in Appeals?

The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration.

This flies directly in the face of *Taylor*. See, above.

It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

One can discuss policy ad nauseum but when the plain language of rule 871-24.27 requires "part-time" employment, that leaves only a fact question of whether the employment quit was FT or PT.

Iowa Admin. Code r. 871-24.25(12) provides for disqualification if an individual quits "without notice during a mutually agreed upon trial period of employment." See also, *Taylor*, where the Court said "he," without reference to the employer, "decided to accept the work on a trial basis." If the rule does not allow benefits after a quit from a *mutually agreed upon* trial period, why would it be allowed from a one-sided trial period?

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally

The Fund is the loser and is represented by the Agency attorney, who implemented this policy. That is why it was never challenged. Few parties appeal UI cases beyond the EAB because of cost/benefit issues.

demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this.

The agency cannot do that without a rule. Until then or without a rule, there is enough info in *Taylor*, coupled with factual development of FT or PT in each case, to address the issue.

In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

Absolutely correct.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

The only status quo argument made at the A-C meeting was that there were not enough of these cases

each year to question Claims' policy as established by the agency attorney's e-mail (attached as a Word doc).

Welch came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Taylor is not dicta and *Welch* did not overrule *Taylor*. They have entirely different fact-patterns. Justice Wolle, later Senior Judge for the US District Court, Southern District of Iowa, wrote in *Taylor*, "The larger issue here [beyond the separation qualification] is whether chapter 96 should be construed to give special protection to persons like Taylor who were drawing unemployment benefits prior to accepting inappropriate employment." That issue was specifically addressed at pp. 537 and 538 of the decision.

> *We decline to carve the proposed judicial exception* out of the existing statutory unemployment compensation scheme. Iowa Code chapter 96 does not authorize payment of benefits to individuals who have quit without good cause attributable to the employer, *even where the claimant has given up unemployment benefits for unsuitable employment before quitting that employment.* Under our statute *it simply makes no difference* that the person who has quit a job was drawing unemployment benefits when the person applied for and accepted a job of questionable suitability. *If public policy demands special consideration* for persons already drawing unemployment benefits who try out potentially unsuitable jobs and fail, *the legislature may amend the statute in that regard.* (Emphasis supplied.)

The Court in both Welch and Taylor invited the Legislature to make an exception or define. It did not in either case. The remand was solely to consider all other reasons (illness, safety, reduction in hours) given for leaving the employment.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Taylor is the controlling authority here, not *Welch*. *Taylor* was not even mentioned in *Welch*, presumably because of the complete absence of PT work in *Taylor*. *Welch* does not apply to this specific discussion until after the *Taylor* threshold is overcome that the C has PT rather than FT employment. (See, statement of issue above.)

McCarthy (1956)
First claim/benefit year
PT job held concurrently with FT job, quit PT then laid off from FT before 10x

Taylor (1985)
Four months into first claim year
Worked full-time for six days.

Welch (1988)
Second benefit year
"Supplemental" job to UI benefits and to meet $250 for second benefit year.
Claim was on basis of part-time work with overlapping full-time wage history

McCarthy and Welch are comparable because they both involve PT quit with a FT wage history. The difference is the second benefit year issue.
Taylor involves a quit of *short-term, FT work* regardless of an earlier FT wage history.

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed. (Highlighting supplied.)

This, again, creates a question of fact since there is not a bright line definition. *McCarthy, Taylor* and *Welch* do not define FT or PT employment and leave it to the Legislature. The Legislature has opted not to do so, which leaves it to be determined by an evidentiary-based finding of fact. The Director has instructed Claims to do by dispensing with the 319 ANDS "easy button."

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor.

Do we distinguish between a part-time worker and part-time employment unless there is a dispute between the parties? I agree that this is not helpful.

The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3(6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

The Legislature begs the question here.

ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Not all ALJs have not responded to the discussion but I believe most seek facts specific to that case from both parties. I am not aware of any ALJ who allows benefits based upon r. 871-24.27 for a C who quits a FT job of short duration. (I'm not clear on Marlon's stated position.)

Dévon

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FW: Welch Quits

From Hillary, Teresa [IWD] **Date** Wednesday, June 12, 2013 8:29 AM
To Wahlert, Teresa [IWD]
Cc

From: Walsh, Joseph [IWD]
Sent: Tuesday, June 11, 2013 8:33 PM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Walsh, Joseph [IWD]
Subject: Welch Quits

This is an effort to start a productive dialogue and reach some type of resolution to the issues surrounding *Welch* quits. As Administrative Law Judges we need to take the lead in interpreting the law in order to have a common definition which allows this agency to provide reasonable and understandable standards to the public. In doing so, we contribute to the rule of law in the employment context. This is the goal.

I know I am a bit wordy, but I want to start this discussion off in a way that gives everyone involved a common understanding of the overall debate. And, for that, I believe historical context is appropriate.

Historical Context and Policy Considerations

The history of this issue makes it particularly tempting to ignore. The *Welch* case was decided in 1988. It truly created more questions than it answered. What all of the Judges have agreed for some time

now is that *Welch* only applies to part-time quits. My reading of *Welch* is that the issue presented clearly was for part-time quits, however, it is interesting that the it did not address the definitions of full-time or part-time employment at all, rather it focused upon partial *unemployment*. I keep asking myself the question, "if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36? The answer, of course, is that we do not know but the policy considerations would really not have changed. I cannot find anything at all in the *Welch* decision which actually states how much Mr. Welch was working for Minburn but the Court summarily defined it as part-time.

The reason I reminisce in all of this is that extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance. A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems. The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration. It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this. In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

(As a side note, I would point out that I am from Perry and I knew the Welch family. I beat up his son in approximately 1981 at a wrestling meet. I didn't wrestle him. I just beat him up in the cafeteria. My dad was the union leader at the Oscar Mayer plant where Welch was downsized in '83. This has no bearing on anything but I thought you all might find it at least mildly interesting.)

The Present

As we move forward in the debate, I think we need to keep the historical context in mind, however, I do not want to get bogged down in debating the past. The debate is about the future within the context defined by the Director. It has been determined that we must come to some type of consensus on this issue and that the old agency policy will not be followed. "The record shall be developed." Nevertheless, *Welch* is still good law and it was undoubtedly written broadly. *Welch* came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is

another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Part-Time Workers and Part-Time Work

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor. The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3(6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

If we assume the statute gives no guidance for interpreting what is part-time employment then it is easy to understand why ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Logically, we should be able to deduce what part-time work is from the phrase part-time worker but personally, I do not find it very helpful.

In any event, at this point, I would like every ALJ to weigh in on what they believe part-time work means. Other participants are welcome to weigh-in on the debate as well. I do not expect a full legal brief from anyone. I expect some type of thoughtful analysis of the statutory and rule language to come up with what you believe is a reasonable interpretation of "part-time work" as it is used in the context of *Welch*. Be creative and let's have a positive discussion.

Joseph L. Walsh
Chief Administrative Law Judge
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Des Moines, Iowa 50319
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Message: RE: Welch Quits

Case Information:

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Policies:

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RE: Welch Quits

From Hillary, Teresa [IWD]

Date Wednesday, June 12, 2013 3:11 PM

To Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

It is going to be on a case by case basis for me. If both parties agree it was FT or PT then no dispute. If they disagree, I would then consider what each side had to say. It would be difficult to say that someone working 35 or more hours per week was only working part-time. And it would be hard to say that someone working less than 20 hrs per week was working full time. I don't know if I can put a hard and fast # of hrs per week on a one-size-fits all basis. I would also consider number of days worked per week. Some nurses work three days per week, but put in around forty hours per week. It would be hard to call that part-time work. Since there is no "number" in any rule or statute about what is part-time, I'll just do it on a case by case basis.

From: Walsh, Joseph [IWD]
Sent: Tuesday, June 11, 2013 8:33 PM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD];

Walsh, Joseph [IWD]
Subject: Welch Quits

This is an effort to start a productive dialogue and reach some type of resolution to the issues surrounding *Welch* quits. As Administrative Law Judges we need to take the lead in interpreting the law in order to have a common definition which allows this agency to provide reasonable and understandable standards to the public. In doing so, we contribute to the rule of law in the employment context. This is the goal.

I know I am a bit wordy, but I want to start this discussion off in a way that gives everyone involved a common understanding of the overall debate. And, for that, I believe historical context is appropriate.

Historical Context and Policy Considerations

The history of this issue makes it particularly tempting to ignore. The *Welch* case was decided in 1988. It truly created more questions than it answered. What all of the Judges have agreed for some time now is that *Welch* only applies to part-time quits. My reading of *Welch* is that the issue presented clearly was for part-time quits, however, it is interesting that the it did not address the definitions of full-time or part-time employment at all, rather it focused upon partial *unemployment*. I keep asking myself the question, "if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36? The answer, of course, is that we do not know but the policy considerations would really not have changed. I cannot find anything at all in the *Welch* decision which actually states how much Mr. Welch was working for Minburn but the Court summarily defined it as part-time.

The reason I reminisce in all of this is that extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance. A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems. The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration. It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this. In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

(As a side note, I would point out that I am from Perry and I knew the Welch family. I beat up his son in approximately 1981 at a wrestling meet. I didn't wrestle him. I just beat him up in the cafeteria.

My dad was the union leader at the Oscar Mayer plant where Welch was downsized in '83. This has no bearing on anything but I thought you all might find it at least mildly interesting.)

The Present

As we move forward in the debate, I think we need to keep the historical context in mind, however, I do not want to get bogged down in debating the past. The debate is about the future within the context defined by the Director. It has been determined that we must come to some type of consensus on this issue and that the old agency policy will not be followed. "The record shall be developed." Nevertheless, *Welch* is still good law and it was undoubtedly written broadly. *Welch* came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Part-Time Workers and Part-Time Work

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor. The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3(6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision,

> that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

If we assume the statute gives no guidance for interpreting what is part-time employment then it is easy to understand why ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Logically, we should be able to deduce what part-time work is from the phrase part-time worker but personally, I do not find it very helpful.

In any event, at this point, I would like every ALJ to weigh in on what they believe part-time work means. Other participants are welcome to weigh-in on the debate as well. I do not expect a full legal brief from anyone. I expect some type of thoughtful analysis of the statutory and rule language to come up with what you believe is a reasonable interpretation of "part-time work" as it is used in the context of *Welch*. Be creative and let's have a positive discussion.

Joseph L. Walsh
Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

Message: RE: Welch Quits

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:01 PM
Item ID:	40861011
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Welch Quits

From Lewis, Devon [IWD]

Date Wednesday, June 12, 2013 11:56 AM

To Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

Bervid PTQ e-mail.doc (29 Kb HTML) **319 FF Questions.doc** (31 Kb HTML)

Seeing only one response so far...(Excerpts from JW's e-mail in black. DML comments in red.)

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> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision,

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"if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36?

I'm not sure I understand this hypothetical – if he were working that many hours he would not be A&A either by hours or wage reduction from benefits.

The sole issue we are discussing is:
Should Claims allow benefits per Iowa Admin. Code r. 871-24.27 for those Cs who quit a FT job held less than four weeks?

I believe the Director has indicated the answer on its face is "no" and that to determine what the dividing line is between full- and part-time employment requires specific factual inquiry. (See attached list of questions for FF guidance I sent Saturday with additions and edits on Monday.)

extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance.

The *Taylor* Court gave specific guidance and directive in 1985 that there is no trial period of unemployment allowance for someone who works FT for six days unless the Legislature specifies otherwise. It has not.

A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems.

I do not recall any such information or request for ALJ input from any previous Director. Does anyone else in Appeals?

The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration.

This flies directly in the face of *Taylor*. See, above.

It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

One can discuss policy ad nauseum but when the plain language of rule 871-24.27 requires "part-time" employment, that leaves only a fact question of whether the employment quit was FT or PT.

Iowa Admin. Code r. 871-24.25(12) provides for disqualification if an individual quits "without notice during a mutually agreed upon trial period of employment." See also, *Taylor*, where the Court said "he," without reference to the employer, "decided to accept the work on a trial basis." If the rule does not allow benefits after a quit from a *mutually agreed upon* trial period, why would it be allowed from a one-sided trial period?

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally

The Fund is the loser and is represented by the Agency attorney, who implemented this policy. That is why it was never challenged. Few parties appeal UI cases beyond the EAB because of cost/benefit issues.

demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this.

The agency cannot do that without a rule. Until then or without a rule, there is enough info in *Taylor*, coupled with factual development of FT or PT in each case, to address the issue.

In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

Absolutely correct.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

The only status quo argument made at the A-C meeting was that there were not enough of these cases each year to question Claims' policy as established by the agency attorney's e-mail (attached as a Word doc).

Welch came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Taylor is not dicta and *Welch* did not overrule *Taylor*. They have entirely different fact-patterns. Justice Wolle, later Senior Judge for the US District Court, Southern District of Iowa, wrote in *Taylor*, "The larger issue here [beyond the separation qualification] is whether chapter 96 should be construed to give special protection to persons like Taylor who were

drawing unemployment benefits prior to accepting inappropriate employment." That issue was specifically addressed at pp. 537 and 538 of the decision.

> *We decline to carve the proposed judicial exception* out of the existing statutory unemployment compensation scheme. Iowa Code chapter 96 does not authorize payment of benefits to individuals who have quit without good cause attributable to the employer, *even where the claimant has given up unemployment benefits for unsuitable employment before quitting that employment*. Under our statute *it simply makes no difference* that the person who has quit a job was drawing unemployment benefits when the person applied for and accepted a job of questionable suitability. *If public policy demands special consideration* for persons already drawing unemployment benefits who try out potentially unsuitable jobs and fail, *the legislature may amend the statute in that regard.* (Emphasis supplied.)

The Court in both Welch and Taylor invited the Legislature to make an exception or define. It did not in either case. The remand was solely to consider all other reasons (illness, safety, reduction in hours) given for leaving the employment.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Taylor is the controlling authority here, not *Welch*. *Taylor* was not even mentioned in *Welch*, presumably because of the complete absence of PT work in *Taylor*. *Welch* does not apply to this specific discussion until after the *Taylor* threshold is overcome that the C has PT rather than FT employment. (See, statement of issue above.)

McCarthy (1956)
First claim/benefit year
PT job held concurrently with FT job, quit PT then laid off from FT before 10x

Taylor (1985)
Four months into first claim year
Worked full-time for six days.

Welch (1988)
Second benefit year
"Supplemental" job to UI benefits and to meet $250 for second benefit year.
Claim was on basis of part-time work with overlapping full-time wage history

McCarthy and Welch are comparable because they both involve PT quit with a FT wage history. The difference is the second benefit year issue.
Taylor involves a quit of *short-term, FT work* regardless of an earlier FT wage history.

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the

> individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed. (Highlighting supplied.)

This, again, creates a question of fact since there is not a bright line definition. *McCarthy, Taylor* and *Welch* do not define FT or PT employment and leave it to the Legislature. The Legislature has opted not to do so, which leaves it to be determined by an evidentiary-based finding of fact. The Director has instructed Claims to do by dispensing with the 319 ANDS "easy button."

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor.

Do we distinguish between a part-time worker and part-time employment unless there is a dispute between the parties? I agree that this is not helpful.

The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3 (6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

The Legislature begs the question here.

ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Not all ALJs have not responded to the discussion but I believe most seek facts specific to that case from both parties. I am not aware of any ALJ who allows benefits based upon r. 871-24.27 for a C who quits a FT job of short duration. (I'm not clear on Marlon's stated position.)

Dévon

From: Andre, Michele [IWD]
Sent: Monday, November 01, 2010 8:56 AM
To: Lainson, Geralyn [IWD]; Gilkison, Judy [IWD]; Putzier, Juli [IWD]; Piagentini, Mary [IWD]; Jergenson, Kathy [IWD]; Van Syoc, Jim [IWD]; Shenk, Jim [IWD]
Subject: FW: Part-time Temporary Quits

Well, here it is in writing. This will change how we look at BAM and to some degree BTQ. Let me know if you have questions....

Thanks...

m

From: Bervid, Joseph [IWD]
Sent: Tuesday, October 26, 2010 9:55 AM
To: Eklund, David [IWD]; Andre, Michele [IWD]; Oleson, Brice [IWD]; Borgeson, Jill [IWD]; Pearce, Frank [IWD]; Prettyman, Laura [IWD]
Cc: Wilkinson, Michael [IWD]
Subject: Part-time Temporary Quits

It has come to my attention some staff are incorrectly applying the law and policy of this agency with regard to part-time/temporary quits. The case law and policy are that employment for four weeks or less is part-time/temporary in nature and the wages are deleted from the base period claim if requl. wages are not present. For employment in the lag quarter and benefit year we flag to adjudicate the separation when it becomes base period wages. This applies to all voluntary quits for whatever reason and not just to those who quit because the work is not suitable. Part-time temporary is defined as any number of hours including 40 hours or less which is 4 weeks or less in duration.

Please amend the decision in the decision for Marilyn Lloyd of Des Moines, Iowa who was disqualified on a part-time quit to an allowance for voluntary quit of 4 weeks or less, ANDS #319 based upon new evidence.

ANDS 319/"part-time quit"/Iowa Admin. Code r. 871-24.27 Notes & Questions

Part-time vs. short-term employment: Note the differences between short-term or temporary employment, long-term or permanent employment and part-time hours or full-time hours of employment. *Full-time work in short-term employment is **not** considered part-time employment.*

Questions to distinguish between full- and part-time employment (if the parties disagree):

- Was the claimant searching for full-time employment when this job was found?
- Was the job advertised as full- or part-time?
- Was the claimant told during the interview/hiring process that the job would be full- or part-time?
- How many hours per week (or pay period, or average over a month) was the claimant scheduled to work? What were the shift hours or work hours expectations/agreement? Did those hours change during the employment?
- Was this job intended to be of short duration? Was there a probationary period or trial period of employment? Did the claimant work full- or part-time hours during that period?
- Did the claimant receive benefits (paid vacation, sick days, health and/or life insurance, retirement contributions, etc.)? Do other employees in this job get the same benefits?
- Do others in this job work full- or part-time? Did the previous job-holder work full- or part-time?
- Did the claimant have other employment during the same or overlapping period? Was that full- or part-time work?
- Is this job similar to claimant's past full-time or regular employment history in the base period?

The Iowa Supreme Court rejected the idea that a person who is receiving unemployment insurance benefits can try out a job and then quit if the person considers the job unsuitable. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985). Taylor, having existing health issues, accepted a full-time job as a jackhammer operator and quit after six days. The Court said the leaving of the full-time, short-term employment as a trial period of employment was without good cause attributable to the employer but the agency should inquire about all other reasons for quitting to determine if any would qualify him.

Message: RE: Welch Quits

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:01 PM
Item ID:	40861013
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Welch Quits

From Lewis, Devon [IWD]

Date Wednesday, June 12, 2013 9:10 PM

To Hillary, Teresa [IWD]; Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

I agree with Teresa. Without a rule there cannot be a standard or bright line response. When I hear testimony about hours that range from about 28 to 32, or an indication of disagreement from the parties, that prompts additional questions.

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Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

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someone working 35 or more hours per week was only working part-time. And it would be hard to say that someone working less than 20 hrs per week was working full time. I don't know if I can put a hard and fast # of hrs per week on a one-size-fits all basis. I would also consider number of days worked per week. Some nurses work three days per week, but put in around forty hours per week. It would be hard to call that part-time work. Since there is no "number" in any rule or statute about what is part-time, I'll just do it on a case by case basis.

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Historical Context and Policy Considerations

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For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

(As a side note, I would point out that I am from Perry and I knew the Welch family. I beat up his son in approximately 1981 at a wrestling meet. I didn't wrestle him. I just beat him up in the cafeteria. My dad was the union leader at the Oscar Mayer plant where Welch was downsized in '83. This has no bearing on anything but I thought you all might find it at least mildly interesting.)

The Present

As we move forward in the debate, I think we need to keep the historical context in mind, however, I do not want to get bogged down in debating the past. The debate is about the future within the context defined by the Director. It has been determined that we must come to some type of consensus on this issue and that the old agency policy will not be followed. "The record shall be developed." Nevertheless, *Welch* is still good law and it was undoubtedly written broadly. *Welch* came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Part-Time Workers and Part-Time Work

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor. The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3(6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

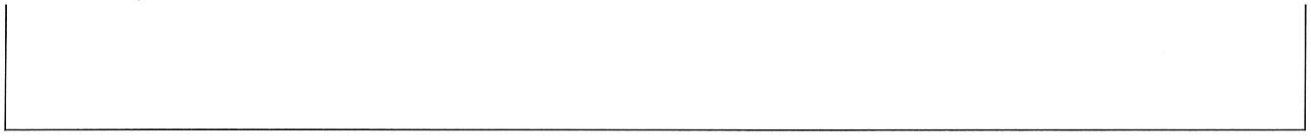
If we assume the statute gives no guidance for interpreting what is part-time employment then it is easy to understand why ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Logically, we should be able to deduce what part-time work is from the phrase part-time worker but personally, I do not find it very helpful.

In any event, at this point, I would like every ALJ to weigh in on what they believe part-time work means. Other participants are welcome to weigh-in on the debate as well. I do not expect a full legal brief from anyone. I expect some type of thoughtful analysis of the statutory and rule language to come up with what you believe is a reasonable interpretation of "part-time work" as it is used in the context of *Welch*. Be creative and let's have a positive discussion.

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov



Message: RE: Welch Quits

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:01 PM
Item ID:	40861014
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Welch Quits

From Lewis, Devon [IWD]

Date Wednesday, June 12, 2013 9:17 PM

To Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

I apologize for the red font and including excerpts from the original to which my responses apply. No offense intended; I was trying to expedite reading. The analysis remains the same. Here it is solo and in black:

871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time

> employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

I'm not sure I understand this hypothetical – if he were working that many hours he would not be A&A either by hours or wage reduction from benefits.

The sole issue we are discussing is:
Should Claims allow benefits per Iowa Admin. Code r. 871-24.27 for those Cs who quit a FT job held less than four weeks?

I believe the Director has indicated the answer on its face is "no" and that to determine what the dividing line is between full- and part-time employment requires specific factual inquiry. (See attached list of questions for FF guidance I sent Saturday with additions and edits on Monday.)

The *Taylor* Court gave specific guidance and directive in 1985 that there is no trial period of unemployment allowance for someone who works FT for six days unless the Legislature specifies otherwise. It has not.

I do not recall any such information or request for ALJ input from any previous Director. Does anyone else in Appeals?

This flies directly in the face of *Taylor*. See, above.

One can discuss policy ad nauseum but when the plain language of rule 871-24.27 requires "part-time" employment, that leaves only a fact question of whether the employment quit was FT or PT.

Iowa Admin. Code r. 871-24.25(12) provides for disqualification if an individual quits "without notice during a mutually agreed upon trial period of employment." See also, *Taylor*, where the Court said "he," without reference to the employer, "decided to accept the work on a trial basis." If the rule does not allow benefits after a quit from a *mutually agreed upon* trial period, why would it be allowed from a one-sided trial period?

The Fund is the loser and is represented by the Agency attorney, who implemented this policy. That is why it was never challenged. Few parties appeal UI cases beyond the EAB because of cost/benefit issues.

The agency cannot do that without a rule. Until then or without a rule, there is enough info in *Taylor*, coupled with factual development of FT or PT in each case, to address the issue.

Absolutely correct.

The only status quo argument made at the A-C meeting was that there were not enough of these cases each year to question Claims' policy as established by the agency attorney's e-mail (attached as a Word doc).

Taylor is not dicta and *Welch* did not overrule *Taylor.* They have entirely different fact-patterns. Justice Wolle, later Senior Judge for the US District Court, Southern District of Iowa, wrote in *Taylor*, "The larger issue here [beyond the separation qualification] is whether chapter 96 should be construed to give special protection to persons like Taylor who were drawing unemployment benefits prior to accepting inappropriate employment." That issue was specifically addressed at pp. 537 and 538 of the decision.

> *We decline to carve the proposed judicial exception* out of the existing statutory unemployment compensation scheme. Iowa Code chapter 96 does not authorize payment of benefits to individuals who have quit without good cause attributable to the employer, *even where the claimant has given up unemployment benefits for unsuitable employment before quitting that employment.* Under our statute *it simply makes no difference* that the person who has quit a job was drawing unemployment benefits when the person applied for and accepted a job of questionable suitability. *If public policy demands special consideration* for persons already drawing unemployment benefits who try out potentially unsuitable jobs and fail, *the legislature may amend the statute in that regard.* (Emphasis supplied.)

The Court in both Welch and Taylor invited the Legislature to make an exception or define. It did not in either case. The remand was solely to consider all other reasons (illness, safety, reduction in hours) given for leaving the employment.

Taylor is the controlling authority here, not *Welch. Taylor* was not even mentioned in *Welch,* presumably because of the complete absence of PT work in *Taylor. Welch* does not apply to this specific discussion until after the *Taylor* threshold is overcome that the C has PT rather than FT employment. (See, statement of issue above.)

McCarthy (1956)
First claim/benefit year
PT job held concurrently with FT job, quit PT then laid off from FT before 10x

Taylor (1985)
Four months into first claim year
Worked full-time for six days.

Welch (1988)
Second benefit year
"Supplemental" job to UI benefits and to meet $250 for second benefit year.
Claim was on basis of part-time work with overlapping full-time wage history

McCarthy and Welch are comparable because they both involve PT quit with a FT wage history. The difference is the second benefit year issue.
Taylor involves a quit of *short-term, FT work* regardless of an earlier FT wage history.

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the

> individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed. (Highlighting supplied.)

This, again, creates a question of fact since there is not a bright line definition. *McCarthy, Taylor* and *Welch* do not define FT or PT employment and leave it to the Legislature. The Legislature has opted not to do so, which leaves it to be determined by an evidentiary-based finding of fact. The Director has instructed Claims to do by dispensing with the 319 ANDS "easy button."

Do we distinguish between a part-time worker and part-time employment unless there is a dispute between the parties? I agree that this is not helpful.

Iowa Code section 96.3(6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

The Legislature begs the question here.

Not all ALJs have not responded to the discussion but I believe most seek facts specific to that case from both parties. I am not aware of any ALJ who allows benefits based upon r. 871-24.27 for a C who quits a FT job of short duration. (I'm not clear on Marlon's stated position.)

Dévon

From: Walsh, Joseph [IWD]
Sent: Wednesday, June 12, 2013 2:20 PM
To: Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

Devon has provided a rebuttal to many of the statements I made about the history and policy considerations. I have no problem with this even though I specifically asked to focus the debate on the future. The main thing is, I don't want to get bogged down in criticizing past Directors and their directions to UI Legal Counsel. I think it makes this whole debate more personal than it needs to be and I find it kind of unnecessary. I think we can all agree at least that prior administrations were faced with the difficult task of implementing *Welch* with very little guidance and whether we agree with how it was done or not, that is the backdrop of the debate.

Also as a point of personal preference I would also ask that we avoid colored responses to one another's arguments. I just hate trying to follow those types of discussions.

The debate at this point should be simple. All I want to know right now from each of the Judges is: How do you determine to determine what is part-time work under *Welch*? It is fine to say it is a case-by-case basis, but there still has to be a standard that guides our interpretations.

From: Lewis, Devon [IWD]
Sent: Wednesday, June 12, 2013 11:56 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

Seeing only one response so far...(Excerpts from JW's e-mail in black. DML comments in red.)

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

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"if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36?

I'm not sure I understand this hypothetical – if he were working that many hours he would not be A&A either by hours or wage reduction from benefits.

The sole issue we are discussing is:
Should Claims allow benefits per Iowa Admin. Code r. 871-24.27 for those Cs who quit a FT job held less than four weeks?

I believe the Director has indicated the answer on its face is "no" and that to determine what the dividing line is between full- and part-time employment requires specific factual inquiry. (See attached list of questions for FF guidance I sent Saturday with additions and edits on Monday.)

extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance.

The *Taylor* Court gave specific guidance and directive in 1985 that there is no trial period of unemployment allowance for someone who works FT for six days unless the Legislature specifies otherwise. It has not.

A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems.

I do not recall any such information or request for ALJ input from any previous Director. Does anyone else in Appeals?

The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration.

This flies directly in the face of *Taylor*. See, above.

It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

One can discuss policy ad nauseum but when the plain language of rule 871-24.27 requires "part-time" employment, that leaves only a fact question of whether the employment quit was FT or PT.

Iowa Admin. Code r. 871-24.25(12) provides for disqualification if an individual quits "without notice during a mutually agreed upon trial period of employment." See also, *Taylor*, where the Court said "he," without reference to the employer, "decided to accept the work on a trial basis." If the rule does not allow benefits after a quit from a *mutually agreed upon* trial period, why would it be allowed from a one-sided trial period?

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally

The Fund is the loser and is represented by the Agency attorney, who implemented this policy. That is why it was never challenged. Few parties appeal UI cases beyond the EAB because of cost/benefit issues.

demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this.

The agency cannot do that without a rule. Until then or without a rule, there is enough info in *Taylor*, coupled with factual development of FT or PT in each case, to address the issue.

In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

Absolutely correct.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

The only status quo argument made at the A-C meeting was that there were not enough of these cases each year to question Claims' policy as established by the agency attorney's e-mail (attached as a Word doc).

Welch came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

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The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3 (6)(b):

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Dévon

Message: FW: Welch Quits

Case Information:

Message Type:	Exchange
Message Direction:	External, Outbound
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:01 PM
Item ID:	40861015
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Welch Quits

From Lewis, Devon [IWD] **Date** Wednesday, June 12, 2013 9:46 PM
To dml88jd@mchsi.com
Cc Hillary, Teresa [IWD]

From: Lewis, Devon [IWD]
Sent: Wednesday, June 12, 2013 9:46 PM
To: Walsh, Joseph [IWD]
Subject: FW: Welch Quits

"I love it. Marlon is getting a following. ☺ In all seriousness, thank you for getting the ball rolling with some good old fashioned common sense"? "Hardcore Taylorites"?

REALLY?! Is your new management style "divide-and-insult"? I've been down that path with you once recently and don't care for it. Your apologies after the last incident now ring hollow. I told DA a few years ago that his motivation style had a "snarky" factor and was not helpful. This is no improvement. You want us to have a positive discussion but you do not make it easy and certainly don't lead by example. I've been trying to be supportive and helpful but the motivation is fading fast.
DML

From: Walsh, Joseph [IWD]
Sent: Wednesday, June 12, 2013 3:15 PM
To: Hendricksmeyer, Bonny [IWD]; Ackerman, Susan [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I have a couple of questions for the "black-and-white Marlon rule."

1. Does the Marlon method effectively create an ad hoc 1 week trial period? Does anyone have a problem with this? Are the hardcore Taylorites comfortable with this?
2. Marlon wrote: "If the [employer's work] standard is something other than 40 hours a week, then it become a judgment call." This is also consistent with what Teresa Hillary just wrote. What are the criteria that you look at to make that judgment call? Number of hours. Industry standard. Employer work rules. I think everyone understands there needs to be an individualized analysis here but do we just develop facts and then go with what it *feels* like? Is that okay?
3. If our goal is to give guidance to employers and workers so they can conduct their lives, I don't think it is going to be okay to say we will just do it on a case by case basis. Think about how the fact-finders are going to feel with that type of direction.

I had a private email which basically stated that an employer may set what is full-time employment by their standards so long as it is reasonable.

From: Hendricksmeyer, Bonny [IWD]
Sent: Wednesday, June 12, 2013 2:51 PM
To: Ackerman, Susan [IWD]; Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I also agree with Marlon.

From: Ackerman, Susan [IWD]
Sent: Wednesday, June 12, 2013 2:48 PM
To: Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I agree with Marlon.

Administrative Law Judge Susan Ackerman
Iowa Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-3747
Fax: (515) 242-5144
Susan.ackerman@iwd.iowa.gov

From: Mormann, Marlon [IWD]
Sent: Wednesday, June 12, 2013 8:34 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

It is all black and white to me. If a 40 hour a week worker is at or below 32 hours it is part time. If the standard in the business is something other than 40 hours a week then it becomes a judgment call. If someone works less than a week at a job it is reasonable to determine it was part time. For employment beyond a week, we evaluate pattern and practice and it is a judgment call.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Walsh, Joseph [IWD]
Sent: Tuesday, June 11, 2013 8:33 PM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Walsh, Joseph [IWD]
Subject: Welch Quits

This is an effort to start a productive dialogue and reach some type of resolution to the issues surrounding *Welch* quits. As Administrative Law Judges we need to take the lead in interpreting the law in order to have a common definition which allows this agency to provide reasonable and understandable standards to the public. In doing so, we contribute to the rule of law in the employment context. This is the goal.

I know I am a bit wordy, but I want to start this discussion off in a way that gives everyone involved a common understanding of the overall debate. And, for that, I believe historical context is appropriate.

Historical Context and Policy Considerations

The history of this issue makes it particularly tempting to ignore. The *Welch* case was decided in 1988. It truly created more questions than it answered. What all of the Judges have agreed for some time now is that *Welch* only applies to part-time quits. My reading of *Welch* is that the issue presented clearly was for part-time quits, however, it is interesting that the it did not address the definitions of

full-time or part-time employment at all, rather it focused upon partial *unemployment*. I keep asking myself the question, "if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36? The answer, of course, is that we do not know but the policy considerations would really not have changed. I cannot find anything at all in the *Welch* decision which actually states how much Mr. Welch was working for Minburn but the Court summarily defined it as part-time.

The reason I reminisce in all of this is that extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance. A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems. The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration. It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this. In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

(As a side note, I would point out that I am from Perry and I knew the Welch family. I beat up his son in approximately 1981 at a wrestling meet. I didn't wrestle him. I just beat him up in the cafeteria. My dad was the union leader at the Oscar Mayer plant where Welch was downsized in '83. This has no bearing on anything but I thought you all might find it at least mildly interesting.)

The Present

As we move forward in the debate, I think we need to keep the historical context in mind, however, I do not want to get bogged down in debating the past. The debate is about the future within the context defined by the Director. It has been determined that we must come to some type of consensus on this issue and that the old agency policy will not be followed. "The record shall be developed." Nevertheless, *Welch* is still good law and it was undoubtedly written broadly. *Welch* came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is

another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Part-Time Workers and Part-Time Work

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor. The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3(6)(b):

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Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

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If we assume the statute gives no guidance for interpreting what is part-time employment then it is easy to understand why ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Logically, we should be able to deduce what part-time work is from the phrase part-time worker but personally, I do not find it very helpful.

In any event, at this point, I would like every ALJ to weigh in on what they believe part-time work means. Other participants are welcome to weigh-in on the debate as well. I do not expect a full legal brief from anyone. I expect some type of thoughtful analysis of the statutory and rule language to come up with what you believe is a reasonable interpretation of "part-time work" as it is used in the context of *Welch*. Be creative and let's have a positive discussion.

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1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

Message: RE: Welch Quits

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:01 PM
Item ID:	40861016
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Welch Quits

From Lewis, Devon [IWD]

Date Wednesday, June 12, 2013 9:47 PM

To Donner, Lynette [IWD]; Walsh, Joseph [IWD]; Hendricksmeyer, Bonny [IWD]; Ackerman, Susan [IWD]; Mormann, Marlon [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

Excellent points and analysis, Lynette. I agree about the hidden and delayed consequences of misapplication of the rule. I also completely agree that there is not even a one-week trial period. Either the employment is full-time, or it is not; otherwise we just circle back to the current Claims application with a difference in numbers of total days or hours worked. I will remove the question about benefits. That may have some relevance in limited situations but will likely cause more confusion than help to fact-finders.

From: Donner, Lynette [IWD]
Sent: Wednesday, June 12, 2013 8:58 PM
To: Walsh, Joseph [IWD]; Hendricksmeyer, Bonny [IWD]; Ackerman, Susan [IWD]; Mormann, Marlon [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

We encounter this question extremely infrequently, since neither party has great incentive to appeal since it is viewed as a "win-win." We only see it in those rare situations where an ER appeals because they say, "hey, the decision can't be right, this person was not part time, they were full time," or where a CL is savvy enough to appeal because they believe they had good cause to quit. The even more unfortunate situation where this comes up is when the CL appeals in a second benefit year because they never earned 10x their weekly benefit amount after the "part-time" quit, and now they don't have sufficient other full time wages in their new base period to be eligible for benefits, but now their appeal is not timely, so we never even get to the underlying facts.

I have never had a case come to me on this issue where there was any "gray" as to whether or not the employment was truly "full time" as compared to "part time" – typically both parties concur whether or not it was "full time" or "part time." I don't believe I have even ever had a relevant case where the intended work schedule for the position was less than 40 hours.

I do not believe there is even a week-long trial period. If the employer's standard is 40 hours, five days a week or four days a week, and the claimant was hired into a standard position with the expectation of working on that same schedule, and the claimant chose to leave the work before completing his/her first 40 hours, I believe you have the same DQ situation as posed in *Taylor*. I do not find the inclusion or exclusion of benefits to be relevant to determining whether the position was "full time."

To the extent that the question even comes up as to jobs which were less than 40 hours per week, I agree that we would look at the individual facts, primarily the employer's standard; i.e., if the employer has a weekend shift where there is a whole crew of persons working a 3-12 schedule (36 hours) and considers those employees to all be full time, and the CL had entered into that employment, I would consider it to be a VQ of a full time position. I don't see this as being any different than what would have to be done to determine if a person is "partially unemployed" in a particular week because he/she "work[ed] less than the regular full-time week" under § 96.19-38-b.

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Sent: Wednesday, June 12, 2013 3:15 PM
To: Hendricksmeyer, Bonny [IWD]; Ackerman, Susan [IWD]; Mormann, Marlon [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
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Subject: RE: Welch Quits

I love it. Marlon is getting a following. ☺ In all seriousness, thank you for getting the ball rolling with some good old fashioned common sense.

I have a couple of questions for the "black-and-white Marlon rule."

1. Does the Marlon method effectively create an ad hoc 1 week trial period? Does anyone have a problem with this? Are the hardcore Taylorites comfortable with this?
2. Marlon wrote: "If the [employer's work] standard is something other than 40 hours a week, then it become a judgment call." This is also consistent with what Teresa Hillary just wrote. What are the criteria that you look at to make that judgment call? Number of hours. Industry

standard. Employer work rules. I think everyone understands there needs to be an individualized analysis here but do we just develop facts and then go with what it *feels* like? Is that okay?

3. If our goal is to give guidance to employers and workers so they can conduct their lives, I don't think it is going to be okay to say we will just do it on a case by case basis. Think about how the fact-finders are going to feel with that type of direction.

I had a private email which basically stated that an employer may set what is full-time employment by their standards so long as it is reasonable.

From: Hendricksmeyer, Bonny [IWD]
Sent: Wednesday, June 12, 2013 2:51 PM
To: Ackerman, Susan [IWD]; Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I also agree with Marlon.

From: Ackerman, Susan [IWD]
Sent: Wednesday, June 12, 2013 2:48 PM
To: Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
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Subject: RE: Welch Quits

I agree with Marlon.

Administrative Law Judge Susan Ackerman
Iowa Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-3747
Fax: (515) 242-5144
Susan.ackerman@iwd.iowa.gov

From: Mormann, Marlon [IWD]
Sent: Wednesday, June 12, 2013 8:34 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

It is all black and white to me. If a 40 hour a week worker is at or

below 32 hours it is part time. If the standard in the business is something other than 40 hours a week then it becomes a judgment call. If someone works less than a week at a job it is reasonable to determine it was part time. For employment beyond a week, we evaluate pattern and practice and it is a judgment call.

Marlon Mormann, Administrative Law Judge
515-265-3512

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Sent: Tuesday, June 11, 2013 8:33 PM
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Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:01 PM
Item ID:	40861017
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Welch Quits

From Lewis, Devon [IWD]

Date Wednesday, June 12, 2013 10:04 PM

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Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

I am not a "hardcore Taylorite" and have an abundance of common sense. I imagine other ALJs might see themselves similarly; as having substantial common sense and not being a "hardcore Marlonite." ☺

My responses:

1. Marlon's method does effectively create an ad hoc one week trial period. I do not believe this fixes the issue but only changes the numbers from 4 weeks to one week.
2. Fact determinations are judgment calls based upon the evidence in the record, not what it *feels* like.
3. Without a rule I don't believe we can give either party specific guidance. We can provide a list of questions – much like the list of considerations in determining whether an individual is an employee or independent contractor.

Would you care to share the e-mail with or without revealing the author's name in this open

discussion? Of course an employer may set their own standards for defining FT and PT employment, attendance points, work rules, and any other number of matters. That does not mean ALJs are bound by them in making decisions.

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Fax: (515) 242-5144
Susan.ackerman@iwd.iowa.gov

From: Mormann, Marlon [IWD]
Sent: Wednesday, June 12, 2013 8:34 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

It is all black and white to me. If a 40 hour a week worker is at or below 32 hours it is part time. If the standard in the business is something other than 40 hours a week then it becomes a judgment call. If someone works less than a week at a job it is reasonable to determine it was part time. For employment beyond a week, we evaluate pattern and practice and it is a judgment call.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Walsh, Joseph [IWD]
Sent: Tuesday, June 11, 2013 8:33 PM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Walsh, Joseph [IWD]
Subject: Welch Quits

This is an effort to start a productive dialogue and reach some type of resolution to the issues surrounding *Welch* quits. As Administrative Law Judges we need to take the lead in interpreting the

law in order to have a common definition which allows this agency to provide reasonable and understandable standards to the public. In doing so, we contribute to the rule of law in the employment context. This is the goal.

I know I am a bit wordy, but I want to start this discussion off in a way that gives everyone involved a common understanding of the overall debate. And, for that, I believe historical context is appropriate.

Historical Context and Policy Considerations

The history of this issue makes it particularly tempting to ignore. The *Welch* case was decided in 1988. It truly created more questions than it answered. What all of the Judges have agreed for some time now is that *Welch* only applies to part-time quits. My reading of *Welch* is that the issue presented clearly was for part-time quits, however, it is interesting that the it did not address the definitions of full-time or part-time employment at all, rather it focused upon partial *unemployment*. I keep asking myself the question, "if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36? The answer, of course, is that we do not know but the policy considerations would really not have changed. I cannot find anything at all in the *Welch* decision which actually states how much Mr. Welch was working for Minburn but the Court summarily defined it as part-time.

The reason I reminisce in all of this is that extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance. A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems. The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration. It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this. In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

(As a side note, I would point out that I am from Perry and I knew the Welch family. I beat up his son in approximately 1981 at a wrestling meet. I didn't wrestle him. I just beat him up in the cafeteria. My dad was the union leader at the Oscar Mayer plant where Welch was downsized in '83. This has no bearing on anything but I thought you all might find it at least mildly interesting.)

The Present

As we move forward in the debate, I think we need to keep the historical context in mind, however, I do not want to get bogged down in debating the past. The debate is about the future within the context defined by the Director. It has been determined that we must come to some type of consensus on this issue and that the old agency policy will not be followed. "The record shall be developed." Nevertheless, *Welch* is still good law and it was undoubtedly written broadly. *Welch* came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Part-Time Workers and Part-Time Work

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed.

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor. The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3(6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the

> part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

If we assume the statute gives no guidance for interpreting what is part-time employment then it is easy to understand why ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Logically, we should be able to deduce what part-time work is from the phrase part-time worker but personally, I do not find it very helpful.

In any event, at this point, I would like every ALJ to weigh in on what they believe part-time work means. Other participants are welcome to weigh-in on the debate as well. I do not expect a full legal brief from anyone. I expect some type of thoughtful analysis of the statutory and rule language to come up with what you believe is a reasonable interpretation of "part-time work" as it is used in the context of *Welch*. Be creative and let's have a positive discussion.

Joseph L. Walsh
Chief Administrative Law Judge
Unemployment Insurance Appeals
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

Message: RE: Welch Quits

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
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Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Welch Quits

From Lewis, Devon [IWD]

Date Wednesday, June 12, 2013 10:14 PM

To Wise, Debra [IWD]; Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]

Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

Another good analysis, Deb. I will incorporate your questions in the list for fact-finders. I especially like the question about whether the employer has a policy defining FT and PT employment and the point where benefit eligibility kicks in. That would still get the basic information in the FF record without being too confusing.

From: Wise, Debra [IWD]
Sent: Wednesday, June 12, 2013 10:07 PM
To: Walsh, Joseph [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

What constitutes part-time work or employment?

General information:

First, I know of no legal guidelines that determines whether an employee is a part time or full time employee. According to the Bureau of Labor Statistics, working part-time is defined as working between 1 and 35 hours per week. (Question – does this mean if an employee works 36 hours a week, they work full time?) The Department of Labor uses a definition of 34 or fewer hours a week as part-time work, but this definition is only used to gather statistical information. Tthe Fair Labor Standards Act (FLSA) does not define full-time employment or part-time employment.

A part time employee traditionally worked less than a 40 hour work week. Today some employers consider employees as full time if they work 30, 32, or 36 hours a week. The definition of part time employee varies from organization to organization. Whether a job is part time or full time can be and is often defined by the employer's policy and can be stated in an employee handbook.
Some employers distinguish between full time and part time employees when they are eligible for benefits such as health insurance, paid time off (PTO), paid vacation days, and sick leave. Some organizations enable part time employees to collect a pro-rated set of benefits. In other organizations, part time status makes an employee ineligible for any benefits. With the new federal health law an employer may be responsible for providing health insurance to employees who work 30 hours a week or more (if all other requirements are met).

I agree with Lynette, that typically whether a person works part time or full time is not usually an issue (at least in the cases I receive.). For ALJs and claims to have a standard guideline – a written rule needs to be developed because part time work or employment has different meanings for different employers or businesses. While working a certain number of hours a week is a great guideline and eliminates discretion, if this is the criteria from distinguishing part time from full time we need to be upfront about this and state this in a rule.

What have I done in the past or should have done when this is an issue:

If the claimant or employer states the claimant works part time find out how many hours a week the claimant generally works and is this customary in that business.

Ask if the employer's policy defines part time work or employment and full time employment. An employer may consider full time employment as something less than 40 hours a week and in some instances more than 40 hours a week.

Ask if there is a minimum number of hours employees must work before they are eligible to receive benefits. Is an employee eligible for more benefits if they work more hours?

There are probably other questions that can be asked when deciding if an employee for a particular employer works part time or full time, but these are the ones that can be used as a starting point.

I do not believe the statues or regulations provide any one-week trial period.

From: Walsh, Joseph [IWD]

Sent: Wednesday, June 12, 2013 2:20 PM
To: Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

Devon has provided a rebuttal to many of the statements I made about the history and policy considerations. I have no problem with this even though I specifically asked to focus the debate on the future. The main thing is, I don't want to get bogged down in criticizing past Directors and their directions to UI Legal Counsel. I think it makes this whole debate more personal than it needs to be and I find it kind of unnecessary. I think we can all agree at least that prior administrations were faced with the difficult task of implementing *Welch* with very little guidance and whether we agree with how it was done or not, that is the backdrop of the debate.

Also as a point of personal preference I would also ask that we avoid colored responses to one another's arguments. I just hate trying to follow those types of discussions.

The debate at this point should be simple. All I want to know right now from each of the Judges is: How do you determine to determine what is part-time work under *Welch*? It is fine to say it is a case-by-case basis, but there still has to be a standard that guides our interpretations.

From: Lewis, Devon [IWD]
Sent: Wednesday, June 12, 2013 11:56 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

Seeing only one response so far...(Excerpts from JW's e-mail in black. DML comments in red.)

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit

payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

"if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36?

I'm not sure I understand this hypothetical -- if he were working that many hours he would not be A&A either by hours or wage reduction from benefits.

The sole issue we are discussing is:
Should Claims allow benefits per Iowa Admin. Code r. 871-24.27 for those Cs who quit a FT job held less than four weeks?

I believe the Director has indicated the answer on its face is "no" and that to determine what the dividing line is between full- and part-time employment requires specific factual inquiry. (See attached list of questions for FF guidance I sent Saturday with additions and edits on Monday.)

extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance.

The *Taylor* Court gave specific guidance and directive in 1985 that there is no trial period of unemployment allowance for someone who works FT for six days unless the Legislature specifies otherwise. It has not.

A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems.

I do not recall any such information or request for ALJ input from any previous Director. Does anyone else in Appeals?

The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration.

This flies directly in the face of *Taylor*. See, above.

It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

One can discuss policy ad nauseum but when the plain language of rule 871-24.27 requires "part-time" employment, that leaves only a fact question of whether the employment quit was FT or PT.

Iowa Admin. Code r. 871-24.25(12) provides for disqualification if an individual quits "without notice

during a mutually agreed upon trial period of employment." See also, *Taylor*, where the Court said "he," without reference to the employer, "decided to accept the work on a trial basis." If the rule does not allow benefits after a quit from a *mutually agreed upon* trial period, why would it be allowed from a one-sided trial period?

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally

The Fund is the loser and is represented by the Agency attorney, who implemented this policy. That is why it was never challenged. Few parties appeal UI cases beyond the EAB because of cost/benefit issues.

demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this.

The agency cannot do that without a rule. Until then or without a rule, there is enough info in *Taylor*, coupled with factual development of FT or PT in each case, to address the issue.

In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

Absolutely correct.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

The only status quo argument made at the A-C meeting was that there were not enough of these cases each year to question Claims' policy as established by the agency attorney's e-mail (attached as a Word doc).

Welch came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Taylor is not dicta and *Welch* did not overrule *Taylor*. They have entirely different fact-patterns. Justice Wolle, later Senior Judge for the US District Court, Southern District of Iowa, wrote in *Taylor*, "The larger issue here [beyond the separation qualification] is whether chapter 96 should be construed to give special protection to persons like Taylor who were drawing unemployment benefits prior to accepting inappropriate employment." That issue was specifically addressed at pp. 537 and 538 of the decision.

> *We decline to carve the proposed judicial exception* out of the existing statutory unemployment compensation scheme. Iowa Code chapter 96 does not authorize payment of benefits to individuals who have quit without good cause attributable to

> the employer, *even where the claimant has given up unemployment benefits for unsuitable employment before quitting that employment*. Under our statute *it simply makes no difference* that the person who has quit a job was drawing unemployment benefits when the person applied for and accepted a job of questionable suitability. *If public policy demands special consideration* for persons already drawing unemployment benefits who try out potentially unsuitable jobs and fail, *the legislature may amend the statute in that regard.* (Emphasis supplied.)

The Court in both Welch and Taylor invited the Legislature to make an exception or define. It did not in either case. The remand was solely to consider all other reasons (illness, safety, reduction in hours) given for leaving the employment.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Taylor is the controlling authority here, not *Welch*. *Taylor* was not even mentioned in *Welch*, presumably because of the complete absence of PT work in *Taylor*. *Welch* does not apply to this specific discussion until after the *Taylor* threshold is overcome that the C has PT rather than FT employment. (See, statement of issue above.)

McCarthy (1956)
First claim/benefit year
PT job held concurrently with FT job, quit PT then laid off from FT before 10x

Taylor (1985)
Four months into first claim year
Worked full-time for six days.

Welch (1988)
Second benefit year
"Supplemental" job to UI benefits and to meet $250 for second benefit year.
Claim was on basis of part-time work with overlapping full-time wage history

McCarthy and Welch are comparable because they both involve PT quit with a FT wage history. The difference is the second benefit year issue.
Taylor involves a quit of *short-term, FT work* regardless of an earlier FT wage history.

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed. (Highlighting supplied.)

This, again, creates a question of fact since there is not a bright line definition. *McCarthy,*

Taylor and *Welch* do not define FT or PT employment and leave it to the Legislature. The Legislature has opted not to do so, which leaves it to be determined by an evidentiary-based finding of fact. The Director has instructed Claims to do by dispensing with the 319 ANDS "easy button."

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor.

Do we distinguish between a part-time worker and part-time employment unless there is a dispute between the parties? I agree that this is not helpful.

The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3 (6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

The Legislature begs the question here.

ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Not all ALJs have not responded to the discussion but I believe most seek facts specific to that case from both parties. I am not aware of any ALJ who allows benefits based upon r. 871-24.27 for a C who quits a FT job of short duration. (I'm not clear on Marlon's stated position.)

Dévon

Message: RE: Welch Quits

Case Information:

Message Type:	Exchange
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Policies:

No Policies attached

RE: Welch Quits

From Lewis, Devon [IWD] **Date** Wednesday, June 19, 2013 8:29 AM
To Wise, Steve [IWD]
Cc

Thank you!

From: Wise, Steve [IWD]
Sent: Wednesday, June 19, 2013 8:27 AM
To: Stephenson, Randall [IWD]; Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I won't repeat my analysis about why the Iowa Supreme Court decision in Taylor—which disqualified a claimant who quit a non-base period full-time job after 6 days of work—forecloses treating a claimant who chooses to make a full-time job a short-term job by quitting after a few days or a few weeks as quitting a part-time job under Welch. My view is whether the claimant quits the full-time job within a week or four weeks is up, the claimant is disqualified unless there's good cause for quitting the job.

In terms of the coming to a consensus about factors to look at to decide if the job is full or part-time, I would think we could come to a consensus on those factors.

I do believe that if claimants aren't advised that they can quit a full-time job without consequence within four weeks or some similar period this is not going to create a lot of appeals.

From: Stephenson, Randall [IWD]

Sent: Monday, June 17, 2013 2:29 PM
To: Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

We can strive for uniformity and consensus but cannot be ruled by it. The factual determination of whether the employment is part-time or full-time depends on a number of factors as outlined by the ALJ responses and it should be ruled on a case by case basis.

The fact-finders should be told that if they decide there is a voluntary quit of part-time employment without good cause attributable to the employer and claimant has sufficient wage credits to be eligible for UI benefits, then the employer is relieved of liability and the claimant draws UI benefits based on those wage credits. This decision will result in very few appeals.

From: Mormann, Marlon [IWD]
Sent: Thursday, June 13, 2013 1:42 PM
To: Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I will follow a consensus created by my peers. I think we need uniformity.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Walsh, Joseph [IWD]
Sent: Thursday, June 13, 2013 1:15 PM
To: Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

The debate seems to have died down, so I will take another crack although I plan no further ill-fated attempts at humor.

To me there are a couple of takeaways so please allow me to see if there is any agreement on these takeaways:

1. **Historically, this does not come up very much (although if FF starts denying more quits, it**

logically will come up). And most cases neither party even really knows the significance or disputes it. (That is the part we all agree upon, I keep pushing to say we need a unified standard because I do not think it is good enough to say it doesn't come up, so let's decide it on a case by case basis).

2. **It is hard to have a unified standard if there is no rule. Hard but not impossible.** Alas this was the problem when Welch came down in 1988. If we make up a new standard and ask everyone to follow it, we will pretty much be doing the same thing now – making up a policy for claims to follow – that we did then; it will just be a standard that ALJs agree with (because we had input). We have to have some type of specific criteria *especially for FF* or the variation will be too disparate. The ALJs have to follow the law not policies. (Everyone should know, however, that rules are hard and they are highly politicized; there are good reasons to avoid doing rules).

Here is the question. If we lock a group of people in a room (perhaps the makeup of the group chosen by the Director), can we come up with a consensus written Claims Training Policy that we can all *generally* agree to follow? Or am I still going to have the Lone Ranger using her/his own method?

The Director has clearly stated that no Judge will ever be told how to decide a specific case. But I think if we can agree to agree to a standard which provides some level of deference to what I am calling a "Claims Training Policy" which applies *Welch* when we will then apply expertise and judicial experience, then I think we will have made a huge step.

From: Wise, Debra [IWD]
Sent: Wednesday, June 12, 2013 10:07 PM
To: Walsh, Joseph [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

What constitutes part-time work or employment?

General information:

First, I know of no legal guidelines that determines whether an employee is a part time or full time employee. According to the Bureau of Labor Statistics, working part-time is defined as working between 1 and 35 hours per week. (Question – does this mean if an employee works 36 hours a week, they work full time?) The Department of Labor uses a definition of 34 or fewer hours a week as part-time work, but this definition is only used to gather statistical information. Tthe Fair Labor Standards Act (FLSA) does not define full-time employment or part-time employment.

A part time employee traditionally worked less than a 40 hour work week. Today some employers consider employees as full time if they work 30, 32, or 36 hours a week. The definition of part time employee varies from organization to organization. Whether a job is part time or full time can be and is often defined by the employer's policy and can be stated in an employee handbook.
Some employers distinguish between full time and part time employees when they are eligible for benefits such as health insurance, paid time off (PTO), paid vacation days, and sick leave. Some

organizations enable part time employees to collect a pro-rated set of benefits. In other organizations, part time status makes an employee ineligible for any benefits. With the new federal health law an employer may be responsible for providing health insurance to employees who work 30 hours a week or more (if all other requirements are met).

I agree with Lynette, that typically whether a person works part time or full time is not usually an issue (at least in the cases I receive.). For ALJs and claims to have a standard guideline – a written rule needs to be developed because part time work or employment has different meanings for different employers or businesses. While working a certain number of hours a week is a great guideline and eliminates discretion, if this is the criteria from distinguishing part time from full time we need to be upfront about this and state this in a rule.

What have I done in the past or should have done when this is an issue:

If the claimant or employer states the claimant works part time find out how many hours a week the claimant generally works and is this customary in that business.

Ask if the employer's policy defines part time work or employment and full time employment. An employer may consider full time employment as something less than 40 hours a week and in some instances more than 40 hours a week.

Ask if there is a minimum number of hours employees must work before they are eligible to receive benefits. Is an employee eligible for more benefits if they work more hours?

There are probably other questions that can be asked when deciding if an employee for a particular employer works part time or full time, but these are the ones that can be used as a starting point.

I do not believe the statues or regulations provide any one-week trial period.

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Sent: Wednesday, June 12, 2013 2:20 PM
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Subject: RE: Welch Quits

Devon has provided a rebuttal to many of the statements I made about the history and policy considerations. I have no problem with this even though I specifically asked to focus the debate on the future. The main thing is, I don't want to get bogged down in criticizing past Directors and their directions to UI Legal Counsel. I think it makes this whole debate more personal than it needs to be and I find it kind of unnecessary. I think we can all agree at least that prior administrations were faced with the difficult task of implementing *Welch* with very little guidance and whether we agree with how it was done or not, that is the backdrop of the debate.

Also as a point of personal preference I would also ask that we avoid colored responses to one another's arguments. I just hate trying to follow those types of discussions.

The debate at this point should be simple. All I want to know right now from each of the Judges is: How do you determine to determine what is part-time work under *Welch*? It is fine to say it is a case-by-case basis, but there still has to be a standard that guides our interpretations.

From: Lewis, Devon [IWD]
Sent: Wednesday, June 12, 2013 11:56 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

Seeing only one response so far...(Excerpts from JW's e-mail in black. DML comments in red.)

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

"if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36?

I'm not sure I understand this hypothetical – if he were working that many hours he would not be A&A either by hours or wage reduction from benefits.

The sole issue we are discussing is:
Should Claims allow benefits per Iowa Admin. Code r. 871-24.27 for those Cs who quit a FT job held less than four weeks?

I believe the Director has indicated the answer on its face is "no" and that to determine what the dividing line is between full- and part-time employment requires specific factual inquiry. (See attached list of questions for FF guidance I sent Saturday with additions and edits on Monday.)

extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance.

The *Taylor* Court gave specific guidance and directive in 1985 that there is no trial period of unemployment allowance for someone who works FT for six days unless the Legislature specifies otherwise. It has not.

A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems.

I do not recall any such information or request for ALJ input from any previous Director. Does anyone else in Appeals?

The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration.

This flies directly in the face of *Taylor*. See, above.

It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

One can discuss policy ad nauseum but when the plain language of rule 871-24.27 requires "part-time" employment, that leaves only a fact question of whether the employment quit was FT or PT.

Iowa Admin. Code r. 871-24.25(12) provides for disqualification if an individual quits "without notice during a mutually agreed upon trial period of employment." See also, *Taylor*, where the Court said "he," without reference to the employer, "decided to accept the work on a trial basis." If the rule does not allow benefits after a quit from a *mutually agreed upon* trial period, why would it be allowed from a one-sided trial period?

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally

The Fund is the loser and is represented by the Agency attorney, who implemented this policy. That is why it was never challenged. Few parties appeal UI cases beyond the EAB because of cost/benefit issues.

demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this.

The agency cannot do that without a rule. Until then or without a rule, there is enough info in *Taylor*, coupled with factual development of FT or PT in each case, to address the issue.

In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

Absolutely correct.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

The only status quo argument made at the A-C meeting was that there were not enough of these cases each year to question Claims' policy as established by the agency attorney's e-mail (attached as a Word doc).

Welch came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Taylor is not dicta and *Welch* did not overrule *Taylor*. They have entirely different fact-patterns. Justice Wolle, later Senior Judge for the US District Court, Southern District of Iowa, wrote in *Taylor*, "The larger issue here [beyond the separation qualification] is whether chapter 96 should be construed to give special protection to persons like Taylor who were drawing unemployment benefits prior to accepting inappropriate employment." That issue was specifically addressed at pp. 537 and 538 of the decision.

> *We decline to carve the proposed judicial exception* out of the existing statutory unemployment compensation scheme. Iowa Code chapter 96 does not authorize payment of benefits to individuals who have quit without good cause attributable to the employer, *even where the claimant has given up unemployment benefits for unsuitable employment before quitting that employment*. Under our statute *it simply makes no difference* that the person who has quit a job was drawing unemployment benefits when the person applied for and accepted a job of questionable suitability. *If public policy demands special consideration* for persons already drawing unemployment benefits who try out potentially unsuitable jobs and fail, *the legislature may amend the statute in that regard.* (Emphasis supplied.)

The Court in both Welch and Taylor invited the Legislature to make an exception or define. It did not in either case. The remand was solely to consider all other reasons (illness, safety, reduction in hours) given for leaving the employment.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Taylor is the controlling authority here, not *Welch*. *Taylor* was not even mentioned in *Welch*, presumably because of the complete absence of PT work in *Taylor*. *Welch* does not apply to this specific discussion until after the *Taylor* threshold is overcome that the C has PT rather than FT employment. (See, statement of issue above.)

McCarthy (1956)
First claim/benefit year
PT job held concurrently with FT job, quit PT then laid off from FT before 10x

Taylor (1985)
Four months into first claim year
Worked full-time for six days.

Welch (1988)
Second benefit year
"Supplemental" job to UI benefits and to meet $250 for second benefit year.
Claim was on basis of part-time work with overlapping full-time wage history

McCarthy and Welch are comparable because they both involve PT quit with a FT wage history. The difference is the second benefit year issue.
Taylor involves a quit of *short-term, FT work* regardless of an earlier FT wage history.

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed. (Highlighting supplied.)

This, again, creates a question of fact since there is not a bright line definition. *McCarthy, Taylor* and *Welch* do not define FT or PT employment and leave it to the Legislature. The Legislature has opted not to do so, which leaves it to be determined by an evidentiary-based finding of fact. The Director has instructed Claims to do by dispensing with the 319 ANDS "easy button."

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor.

Do we distinguish between a part-time worker and part-time employment unless there is a dispute between the parties? I agree that this is not helpful.

The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3 (6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers

required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

The Legislature begs the question here.

ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Not all ALJs have not responded to the discussion but I believe most seek facts specific to that case from both parties. I am not aware of any ALJ who allows benefits based upon r. 871-24.27 for a C who quits a FT job of short duration. (I'm not clear on Marlon's stated position.)

Dévon

Message: RE: Welch Quits

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:01 PM
Item ID:	40861025
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Welch Quits

From Lewis, Devon [IWD]

Date Wednesday, June 19, 2013 11:35 AM

To Walsh, Joseph [IWD]; Wise, Steve [IWD]; Stephenson, Randall [IWD]; Mormann, Marlon [IWD]; Wise, Debra [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]

Cc Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]

319 FF Questions.doc (32 Kb HTML)

This is the most recent draft of proposed FF questions if there is a party dispute about FT-PT status. Revisions were made after ALJ feedback and input. Whomever is on the committee may use any part or all of it.

From: Walsh, Joseph [IWD]
Sent: Wednesday, June 19, 2013 10:56 AM
To: Wise, Steve [IWD]; Stephenson, Randall [IWD]; Mormann, Marlon [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

The point about "advice" is a good one. We have a number of people in the agency who give information about claims to claimants and the public. We need to make sure we are all on the same page once we have a new training policy in place. We probably need to bring in Lori A. from Workforce Services at some point (Mike W. can you handle that?).

At this point, someone has to write up a training policy to give clear, direct guidance to fact-finders who have all different levels of skill when it comes to interpreting the law and then we have to get 15 ALJs to agree to follow it with some level of consistency at least as a secondary authority.

It is easy to say that we are not going to get many appeals but I don't think we know that. We have had 20+ years of a de facto trial work interpretation of Welch. Neither Welch, nor Taylor define the parameters of PT employment. Here is how most of the cases I listen to go:

Q. Was the claimant full-time or part-time?
A. Full-time.
Q. Okay.
[End of questioning].

If the claimant doesn't dispute it, most judges do not touch it any further. (This of course makes sense if it is not an issue in the case, which it is not in most of the cases we get). In other words, ALJs often allow the parties to define whether the claimant was full-time or part-time. That is obviously wrong *if it is a potential dispute in the case*. I listened to one hilarious case recently that went something like this:

Q. Was the claimant full-time or part-time?
A. How do you define that?
[This was really exciting for me because I wanted to get insight outside of this debate process]
Q. What do you mean? You don't know what is full-time and part-time?
A. Well, I know how we define it here but I am just not sure what you mean.

The next step of the process is that Mike Wilkinson and I are each going to name a few people to a small group team to create a draft training policy for FF. The small group will circulate the draft for comment and, once approved by the Director, it will become the official training for the FF. Mike and I are going to figure out the small group by the end of the week.

From: Wise, Steve [IWD]
Sent: Wednesday, June 19, 2013 8:27 AM
To: Stephenson, Randall [IWD]; Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I won't repeat my analysis about why the Iowa Supreme Court decision in Taylor—which disqualified a claimant who quit a non-base period full-time job after 6 days of work—forecloses treating a claimant who chooses to make a full-time job a short-term job by quitting after a few days or a few weeks as quitting a part-time job under Welch. My view is whether the claimant quits the full-time job within a week or four weeks is up, the claimant is disqualified unless there's good cause for quitting the job.

In terms of the coming to a consensus about factors to look at to decide if the job is full or part-time, I would think we could come to a consensus on those factors.

I do believe that if claimants aren't advised that they can quit a full-time job without consequence within four weeks or some similar period this is not going to create a lot of appeals.

From: Stephenson, Randall [IWD]
Sent: Monday, June 17, 2013 2:29 PM
To: Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

We can strive for uniformity and consensus but cannot be ruled by it. The factual determination of whether the employment is part-time or full-time depends on a number of factors as outlined by the ALJ responses and it should be ruled on a case by case basis.

The fact-finders should be told that if they decide there is a voluntary quit of part-time employment without good cause attributable to the employer and claimant has sufficient wage credits to be eligible for UI benefits, then the employer is relieved of liability and the claimant draws UI benefits based on those wage credits. This decision will result in very few appeals.

From: Mormann, Marlon [IWD]
Sent: Thursday, June 13, 2013 1:42 PM
To: Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I will follow a consensus created by my peers. I think we need uniformity.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Walsh, Joseph [IWD]
Sent: Thursday, June 13, 2013 1:15 PM
To: Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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The debate seems to have died down, so I will take another crack although I plan no further ill-fated attempts at humor.

To me there are a couple of takeaways so please allow me to see if there is any agreement on these takeaways:

1. **Historically, this does not come up very much (although if FF starts denying more quits, it logically will come up).** And most cases neither party even really knows the significance or disputes it. (That is the part we all agree upon, I keep pushing to say we need a unified standard because I do not think it is good enough to say it doesn't come up, so let's decide it on a case by case basis).
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Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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Sent: Wednesday, June 12, 2013 11:56 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

Seeing only one response so far...(Excerpts from JW's e-mail in black. DML comments in red.)

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"if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible for partial unemployment, would the outcome have been different?" How about 36?

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One can discuss policy ad nauseum but when the plain language of rule 871-24.27 requires "part-time" employment, that leaves only a fact question of whether the employment quit was FT or PT.

Iowa Admin. Code r. 871-24.25(12) provides for disqualification if an individual quits "without notice during a mutually agreed upon trial period of employment." See also, *Taylor*, where the Court said "he," without reference to the employer, "decided to accept the work on a trial basis." If the rule does not allow benefits after a quit from a *mutually agreed upon* trial period, why would it be allowed from a one-sided trial period?

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally

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The agency cannot do that without a rule. Until then or without a rule, there is enough info in *Taylor*, coupled with factual development of FT or PT in each case, to address the issue.

In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

Absolutely correct.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

The only status quo argument made at the A-C meeting was that there were not enough of these cases each year to question Claims' policy as established by the agency attorney's e-mail (attached as a Word doc).

Welch came after *Taylor* so *Taylor* cannot very well overrule it. Had *Welch* been decided upon the basis of *Taylor*, Mr. Welch would have been denied benefits. He was not. *Taylor*, of course, was merely a remand case and was comprised almost exclusively of dicta.

Taylor is not dicta and *Welch* did not overrule *Taylor*. They have entirely different fact-patterns. Justice Wolle, later Senior Judge for the US District Court, Southern District of Iowa, wrote in *Taylor*, "The larger issue here [beyond the separation qualification] is whether chapter 96 should be construed to give special protection to persons like Taylor who were drawing unemployment benefits prior to accepting inappropriate employment." That issue was specifically addressed at pp. 537 and 538 of the decision.

> *We decline to carve the proposed judicial exception* out of the existing statutory unemployment compensation scheme. Iowa Code chapter 96 does not authorize payment of benefits to individuals who have quit without good cause attributable to the employer, *even where the claimant has given up unemployment benefits for unsuitable employment before quitting that employment*. Under our statute *it simply makes no difference* that the person who has quit a job was drawing unemployment benefits when the person applied for and accepted a job of questionable suitability. *If public policy demands special consideration* for persons already drawing unemployment benefits who try out potentially unsuitable jobs and fail, *the legislature may amend the statute in that regard.* (Emphasis supplied.)

The Court in both Welch and Taylor invited the Legislature to make an exception or define. It did not in either case. The remand was solely to consider all other reasons (illness, safety,

reduction in hours) given for leaving the employment.

Steve and Devon have already written excellent short briefs which provide a narrower, more conventional explanation of *Welch*. To be clear, I do not at all disagree with their legal analysis. It is another way of looking at *Welch*. Even the narrower conventional *Welch* interpretation, however, creates questions which must be answered. The first is, what is part-time employment in the context of *Welch*?

Taylor is the controlling authority here, not *Welch*. *Taylor* was not even mentioned in *Welch*, presumably because of the complete absence of PT work in *Taylor*. *Welch* does not apply to this specific discussion until after the *Taylor* threshold is overcome that the C has PT rather than FT employment. (See, statement of issue above.)

McCarthy (1956)
First claim/benefit year
PT job held concurrently with FT job, quit PT then laid off from FT before 10x

Taylor (1985)
Four months into first claim year
Worked full-time for six days.

Welch (1988)
Second benefit year
"Supplemental" job to UI benefits and to meet $250 for second benefit year.
Claim was on basis of part-time work with overlapping full-time wage history

McCarthy and Welch are comparable because they both involve PT quit with a FT wage history. The difference is the second benefit year issue.
Taylor involves a quit of *short-term, FT work* regardless of an earlier FT wage history.

Iowa Code section 96.3(6)(a) defines part-time *worker* as follows:

> "part-time worker" means an individual whose normal work is in an occupation in which the individual's services are not required for the customary scheduled full-time hours prevailing in the establishment in which the individual is employed, or who, owing to personal circumstances, does not customarily work the customary scheduled full-time hours prevailing in the establishment in which the individual is employed. (Highlighting supplied.)

This, again, creates a question of fact since there is not a bright line definition. *McCarthy, Taylor* and *Welch* do not define FT or PT employment and leave it to the Legislature. The Legislature has opted not to do so, which leaves it to be determined by an evidentiary-based finding of fact. The Director has instructed Claims to do by dispensing with the 319 ANDS "easy button."

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor.

Do we distinguish between a part-time worker and part-time employment unless there is a

dispute between the parties? I agree that this is not helpful.

The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3 (6)(b):

> The director shall prescribe fair and reasonable general rules applicable to part-time workers, for determining their full-time weekly wage, and the total wages in employment by employers required to qualify such workers for benefits. An individual is a part-time worker if a majority of the weeks of work in such individual's base period includes part-time work. Part-time workers are not required to be available for, seek, or accept full-time employment.

The Legislature begs the question here.

ALJs are all over the map on interpreting part-time employment. Some ALJs seem to use a hard and fast 32 or 36 hour rule. Others seem to leave it up to the employer to decide what is part-time for them.

Not all ALJs have not responded to the discussion but I believe most seek facts specific to that case from both parties. I am not aware of any ALJ who allows benefits based upon r. 871-24.27 for a C who quits a FT job of short duration. (I'm not clear on Marlon's stated position.)

Dévon

ANDS 319/"part-time quit"/Iowa Admin. Code r. 871-24.27 Notes & Questions

Part-time vs. short-term employment: Note the differences between short-term or temporary employment, long-term or permanent employment and part-time hours or full-time hours of employment. *Full-time work in short-term employment is **not** considered part-time employment.*

Questions to distinguish between full- and part-time employment (if the parties disagree):

- Was the claimant searching for full-time employment when this job was found?
- Was the job advertised as full- or part-time?
- Was the claimant told during the interview/hiring process that the job would be full- or part-time?
- Does the employer's policy define full- or part-time work?
- How many hours per week (or pay period, or average over a month) was the claimant scheduled to work? What were the shift hours or work hours expectations/agreement? Did those hours change during the employment?
- Was this job intended to be of short duration? Was there a probationary period or trial period of employment? Did the claimant work full- or part-time hours during that period?
- Is there a minimum number of hours required to be eligible for benefits (PTO, paid vacation, sick days, health and/or life insurance, retirement contributions, etc.)? If they work more hours are they eligible for additional benefits?
- Do others in this job/business customarily work full- or part-time? Did the previous job-holder work full- or part-time?
- Did the claimant have other employment during the same or overlapping period? Was that full- or part-time work?
- Is this job similar to claimant's past full-time or regular employment history in the base period?

The Iowa Supreme Court rejected the idea that a person who is receiving unemployment insurance benefits can try out a job and then quit if the person considers the job unsuitable. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534 (Iowa 1985). Taylor, having existing health issues, accepted a full-time job as a jackhammer operator and quit after six days. The Court said the leaving of the full-time, short-term employment as a trial period of employment was without good cause attributable to the employer but remanded to the agency for inquiry about all other reasons for quitting to determine if any would qualify him.

Message: FW: TRAINING

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:02 PM
Item ID:	40861029
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: TRAINING

From Hillary, Teresa [IWD] **Date** Friday, June 21, 2013 10:56 AM
To Lewis, Devon [IWD]
Cc

image001.jpg (3 Kb HTML)

I know you've been working on a desk manual, I would like to figure out some way to incorporate printed information, like a master list of screens available into that manual that would be available for all alj's. I'm meeting with Ryan on tue to talk details of training. Let me know anything you think I should get from him to put into that manual. We can talk more about it next week.

Ciao ciao

From: Walsh, Joseph [IWD]
Sent: Friday, June 21, 2013 10:12 AM
To: West, Ryan [IWD]
Cc: Hillary, Teresa [IWD]
Subject: RE: TRAINING

Ryan – Please work directly with Teresa Hillary. She is going to be in charge of scheduling and organizing all training for the Bureau.

Joe

From: West, Ryan [IWD]
Sent: Thursday, June 20, 2013 10:45 AM
To: Walsh, Joseph [IWD]
Subject: TRAINING

Hi Joe,

Hey do you have a date for the training? Can we possibly look at after the second week of July?

Ryan West
Regional Operations Manager
Iowa Workforce Development
(515) 242-0413 P
(515) 281-9321 F

titlegraphic

From: Wise, Steve [IWD]
Sent: Wednesday, June 19, 2013 8:27 AM
To: Stephenson, Randall [IWD]; Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I won't repeat my analysis about why the Iowa Supreme Court decision in Taylor—which disqualified a claimant who quit a non-base period full-time job after 6 days of work—forecloses treating a claimant who chooses to make a full-time job a short-term job by quitting after a few days or a few weeks as quitting a part-time job under Welch. My view is whether the claimant quits the full-time job within a week or four weeks is up, the claimant is disqualified unless there's good cause for quitting the job.

In terms of the coming to a consensus about factors to look at to decide if the job is full or part-time, I would think we could come to a consensus on those factors.

I do believe that if claimants aren't advised that they can quit a full-time job without consequence within four weeks or some similar period this is not going to create a lot of appeals.

From: Stephenson, Randall [IWD]
Sent: Monday, June 17, 2013 2:29 PM
To: Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

We can strive for uniformity and consensus but cannot be ruled by it. The factual determination of whether the employment is part-time or full-time depends on a number of factors as outlined by the

ALJ responses and it should be ruled on a case by case basis.

The fact-finders should be told that if they decide there is a voluntary quit of part-time employment without good cause attributable to the employer and claimant has sufficient wage credits to be eligible for UI benefits, then the employer is relieved of liability and the claimant draws UI benefits based on those wage credits. This decision will result in very few appeals.

From: Mormann, Marlon [IWD]
Sent: Thursday, June 13, 2013 1:42 PM
To: Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I will follow a consensus created by my peers. I think we need uniformity.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Walsh, Joseph [IWD]
Sent: Thursday, June 13, 2013 1:15 PM
To: Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

The debate seems to have died down, so I will take another crack although I plan no further ill-fated attempts at humor.

To me there are a couple of takeaways so please allow me to see if there is any agreement on these takeaways:

1. **Historically, this does not come up very much (although if FF starts denying more quits, it logically will come up).** And most cases neither party even really knows the significance or disputes it. (That is the part we all agree upon, I keep pushing to say we need a unified standard because I do not think it is good enough to say it doesn't come up, so let's decide it on a case by case basis).
2. **It is hard to have a unified standard if there is no rule. Hard but not impossible.** Alas this was the problem when Welch came down in 1988. If we make up a new standard and ask everyone to follow it, we will pretty much be doing the same thing now – making up a policy for claims to follow – that we did then; it will just be a standard that ALJs agree with (because we had input). We have to have some type of specific criteria *especially for FF* or the

variation will be too disparate. The ALJs have to follow the law not policies. (Everyone should know, however, that rules are hard and they are highly politicized; there are good reasons to avoid doing rules).

Here is the question. If we lock a group of people in a room (perhaps the makeup of the group chosen by the Director), can we come up with a consensus written Claims Training Policy that we can all *generally* agree to follow? Or am I still going to have the Lone Ranger using her/his own method?

The Director has clearly stated that no Judge will ever be told how to decide a specific case. But I think if we can agree to agree to a standard which provides some level of deference to what I am calling a "Claims Training Policy" which applies *Welch* when we will then apply expertise and judicial experience, then I think we will have made a huge step.

From: Wise, Debra [IWD]
Sent: Wednesday, June 12, 2013 10:07 PM
To: Walsh, Joseph [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

What constitutes part-time work or employment?

General information:

First, I know of no legal guidelines that determines whether an employee is a part time or full time employee. According to the Bureau of Labor Statistics, working part-time is defined as working between 1 and 35 hours per week. (Question – does this mean if an employee works 36 hours a week, they work full time?) The Department of Labor uses a definition of 34 or fewer hours a week as part-time work, but this definition is only used to gather statistical information. Tthe Fair Labor Standards Act (FLSA) does not define full-time employment or part-time employment.

A part time employee traditionally worked less than a 40 hour work week. Today some employers consider employees as full time if they work 30, 32, or 36 hours a week. The definition of part time employee varies from organization to organization. Whether a job is part time or full time can be and is often defined by the employer's policy and can be stated in an employee handbook.
Some employers distinguish between full time and part time employees when they are eligible for benefits such as health insurance, paid time off (PTO), paid vacation days, and sick leave. Some organizations enable part time employees to collect a pro-rated set of benefits. In other organizations, part time status makes an employee ineligible for any benefits. With the new federal health law an employer may be responsible for providing health insurance to employees who work 30 hours a week or more (if all other requirements are met).

I agree with Lynette, that typically whether a person works part time or full time is not usually an issue (at least in the cases I receive.). For ALJs and claims to have a standard guideline – a written rule needs to be developed because part time work or employment has different

meanings for different employers or businesses. While working a certain number of hours a week is a great guideline and eliminates discretion, if this is the criteria from distinguishing part time from full time we need to be upfront about this and state this in a rule.

What have I done in the past or should have done when this is an issue:

If the claimant or employer states the claimant works part time find out how many hours a week the claimant generally works and is this customary in that business.

Ask if the employer's policy defines part time work or employment and full time employment. An employer may consider full time employment as something less than 40 hours a week and in some instances more than 40 hours a week.

Ask if there is a minimum number of hours employees must work before they are eligible to receive benefits. Is an employee eligible for more benefits if they work more hours?

There are probably other questions that can be asked when deciding if an employee for a particular employer works part time or full time, but these are the ones that can be used as a starting point.

I do not believe the statues or regulations provide any one-week trial period.

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Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
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Absolutely correct.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

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> *We decline to carve the proposed judicial exception* out of the existing statutory unemployment compensation scheme. Iowa Code chapter 96 does not authorize payment of benefits to individuals who have quit without good cause attributable to the employer, *even where the claimant has given up unemployment benefits for unsuitable employment before quitting that employment*. Under our statute *it simply makes no difference* that the person who has quit a job was drawing unemployment benefits when the person applied for and accepted a job of questionable suitability. *If public policy demands special consideration* for persons already drawing unemployment benefits who try out potentially unsuitable jobs and fail, *the legislature may amend the statute in that regard.* (Emphasis supplied.)

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Taylor is the controlling authority here, not *Welch. Taylor* was not even mentioned in *Welch,* presumably because of the complete absence of PT work in *Taylor. Welch* does not apply to

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PT job held concurrently with FT job, quit PT then laid off from FT before 10x

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Four months into first claim year
Worked full-time for six days.

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"Supplemental" job to UI benefits and to meet $250 for second benefit year.
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This, again, creates a question of fact since there is not a bright line definition. *McCarthy, Taylor* and *Welch* do not define FT or PT employment and leave it to the Legislature. The Legislature has opted not to do so, which leaves it to be determined by an evidentiary-based finding of fact. The Director has instructed Claims to do by dispensing with the 319 ANDS "easy button."

The statute defines part-time worker apparently for the purpose of establishing a partial unemployment claim. Part-time *employment*, however, is actually not defined. This is significant but frankly, it is probably not very helpful to our endeavor.

Do we distinguish between a part-time worker and part-time employment unless there is a dispute between the parties? I agree that this is not helpful.

The statute, however, goes on to explain part-time workers in further detail in Iowa Code section 96.3 (6)(b):

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Dévon

Message: RE: TRAINING

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:02 PM
Item ID:	40861052
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: TRAINING

From Hillary, Teresa [IWD] **Date** Wednesday, June 26, 2013 8:35 AM
To Lewis, Devon [IWD]
Cc

image001.jpg (3 Kb HTML)

I agree, in fact I said that same thing to Ryan and Dave. The alj's don't know what they don't know. Lets see what happens at the training.

From: Lewis, Devon [IWD]
Sent: Tuesday, June 25, 2013 4:02 PM
To: Hillary, Teresa [IWD]
Subject: RE: TRAINING

That is a great idea and much needed. I think we're in a spot where we don't know what we don't know so it's difficult to figure out what should go in there. I guess we add as we go along.

From: Hillary, Teresa [IWD]
Sent: Friday, June 21, 2013 10:56 AM
To: Lewis, Devon [IWD]
Subject: FW: TRAINING

I know you've been working on a desk manual, I would like to figure out some way to incorporate printed information, like a master list of screens available into that manual that would be available for all alj's. I'm meeting with Ryan on tue to talk details of training. Let me know anything you think I should get from him to put into that manual. We can talk more about it next week.

Ciao ciao

From: Walsh, Joseph [IWD]
Sent: Friday, June 21, 2013 10:12 AM
To: West, Ryan [IWD]
Cc: Hillary, Teresa [IWD]
Subject: RE: TRAINING

Ryan – Please work directly with Teresa Hillary. She is going to be in charge of scheduling and organizing all training for the Bureau.

Joe

From: West, Ryan [IWD]
Sent: Thursday, June 20, 2013 10:45 AM
To: Walsh, Joseph [IWD]
Subject: TRAINING

Hi Joe,

Hey do you have a date for the training? Can we possibly look at after the second week of July?

Ryan West
Regional Operations Manager
Iowa Workforce Development
(515) 242-0413 P
(515) 281-9321 F

titlegraphic

From: Wise, Steve [IWD]
Sent: Wednesday, June 19, 2013 8:27 AM
To: Stephenson, Randall [IWD]; Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I won't repeat my analysis about why the Iowa Supreme Court decision in Taylor—which disqualified a claimant who quit a non-base period full-time job after 6 days of work—forecloses treating a claimant who chooses to make a full-time job a short-term job by quitting after a few days or a few weeks as quitting a part-time job under Welch. My view is whether the claimant quits the full-time job within a week or four weeks is up, the claimant is disqualified unless there's good cause for quitting the job.

In terms of the coming to a consensus about factors to look at to decide if the job is full or part-time, I would think we could come to a consensus on those factors.

I do believe that if claimants aren't advised that they can quit a full-time job without consequence within four weeks or some similar period this is not going to create a lot of appeals.

From: Stephenson, Randall [IWD]
Sent: Monday, June 17, 2013 2:29 PM
To: Mormann, Marlon [IWD]; Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

We can strive for uniformity and consensus but cannot be ruled by it. The factual determination of whether the employment is part-time or full-time depends on a number of factors as outlined by the ALJ responses and it should be ruled on a case by case basis.

The fact-finders should be told that if they decide there is a voluntary quit of part-time employment without good cause attributable to the employer and claimant has sufficient wage credits to be eligible for UI benefits, then the employer is relieved of liability and the claimant draws UI benefits based on those wage credits. This decision will result in very few appeals.

From: Mormann, Marlon [IWD]
Sent: Thursday, June 13, 2013 1:42 PM
To: Walsh, Joseph [IWD]; Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

I will follow a consensus created by my peers. I think we need uniformity.

Marlon Mormann, Administrative Law Judge
515-265-3512

From: Walsh, Joseph [IWD]
Sent: Thursday, June 13, 2013 1:15 PM
To: Wise, Debra [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

The debate seems to have died down, so I will take another crack although I plan no further ill-fated attempts at humor.

To me there are a couple of takeaways so please allow me to see if there is any agreement on these takeaways:

1. **Historically, this does not come up very much (although if FF starts denying more quits, it logically will come up).** And most cases neither party even really knows the significance or disputes it. (That is the part we all agree upon, I keep pushing to say we need a unified standard because I do not think it is good enough to say it doesn't come up, so let's decide it on a case by case basis).
2. **It is hard to have a unified standard if there is no rule. Hard but not impossible.** Alas this was the problem when Welch came down in 1988. If we make up a new standard and ask everyone to follow it, we will pretty much be doing the same thing now – making up a policy for claims to follow – that we did then; it will just be a standard that ALJs agree with (because we had input). We have to have some type of specific criteria *especially for FF* or the variation will be too disparate. The ALJs have to follow the law not policies. (Everyone should know, however, that rules are hard and they are highly politicized; there are good reasons to avoid doing rules).

Here is the question. If we lock a group of people in a room (perhaps the makeup of the group chosen by the Director), can we come up with a consensus written Claims Training Policy that we can all *generally* agree to follow? Or am I still going to have the Lone Ranger using her/his own method?

The Director has clearly stated that no Judge will ever be told how to decide a specific case. But I think if we can agree to agree to a standard which provides some level of deference to what I am calling a "Claims Training Policy" which applies *Welch* when we will then apply expertise and judicial experience, then I think we will have made a huge step.

From: Wise, Debra [IWD]
Sent: Wednesday, June 12, 2013 10:07 PM
To: Walsh, Joseph [IWD]; Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

What constitutes part-time work or employment?

General information:

First, I know of no legal guidelines that determines whether an employee is a part time or full time employee. According to the Bureau of Labor Statistics, working part-time is defined as working between 1 and 35 hours per week. (Question – does this mean if an employee works 36 hours a week, they work full time?) The Department of Labor uses a definition of 34 or fewer hours a week as

part-time work, but this definition is only used to gather statistical information. Tthe Fair Labor Standards Act (FLSA) does not define full-time employment or part-time employment.

A part time employee traditionally worked less than a 40 hour work week. Today some employers consider employees as full time if they work 30, 32, or 36 hours a week. The definition of part time employee varies from organization to organization. Whether a job is part time or full time can be and is often defined by the employer's policy and can be stated in an employee handbook.
Some employers distinguish between full time and part time employees when they are eligible for benefits such as health insurance, paid time off (PTO), paid vacation days, and sick leave. Some organizations enable part time employees to collect a pro-rated set of benefits. In other organizations, part time status makes an employee ineligible for any benefits. With the new federal health law an employer may be responsible for providing health insurance to employees who work 30 hours a week or more (if all other requirements are met).

I agree with Lynette, that typically whether a person works part time or full time is not usually an issue (at least in the cases I receive.). For ALJs and claims to have a standard guideline – a written rule needs to be developed because part time work or employment has different meanings for different employers or businesses. While working a certain number of hours a week is a great guideline and eliminates discretion, if this is the criteria from distinguishing part time from full time we need to be upfront about this and state this in a rule.

What have I done in the past or should have done when this is an issue:

If the claimant or employer states the claimant works part time find out how many hours a week the claimant generally works and is this customary in that business.

Ask if the employer's policy defines part time work or employment and full time employment. An employer may consider full time employment as something less than 40 hours a week and in some instances more than 40 hours a week.

Ask if there is a minimum number of hours employees must work before they are eligible to receive benefits. Is an employee eligible for more benefits if they work more hours?

There are probably other questions that can be asked when deciding if an employee for a particular employer works part time or full time, but these are the ones that can be used as a starting point.

I do not believe the statues or regulations provide any one-week trial period.

From: Walsh, Joseph [IWD]
Sent: Wednesday, June 12, 2013 2:20 PM
To: Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

Devon has provided a rebuttal to many of the statements I made about the history and policy considerations. I have no problem with this even though I specifically asked to focus the debate on the future. The main thing is, I don't want to get bogged down in criticizing past Directors and their directions to UI Legal Counsel. I think it makes this whole debate more personal than it needs to be and I find it kind of unnecessary. I think we can all agree at least that prior administrations were faced with the difficult task of implementing *Welch* with very little guidance and whether we agree with how it was done or not, that is the backdrop of the debate.

Also as a point of personal preference I would also ask that we avoid colored responses to one another's arguments. I just hate trying to follow those types of discussions.

The debate at this point should be simple. All I want to know right now from each of the Judges is: How do you determine to determine what is part-time work under *Welch*? It is fine to say it is a case-by-case basis, but there still has to be a standard that guides our interpretations.

From: Lewis, Devon [IWD]
Sent: Wednesday, June 12, 2013 11:56 AM
To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]
Subject: RE: Welch Quits

Seeing only one response so far...(Excerpts from JW's e-mail in black. DML comments in red.)

Part-time *employment* remains entirely undefined although it is referenced in 871 IAC section 24.27:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

"if Mr. Welch had consistently worked 32 hours a week for the City of Minburn and was still eligible

for partial unemployment, would the outcome have been different?" How about 36?

I'm not sure I understand this hypothetical – if he were working that many hours he would not be A&A either by hours or wage reduction from benefits.

The sole issue we are discussing is:
Should Claims allow benefits per Iowa Admin. Code r. 871-24.27 for those Cs who quit a FT job held less than four weeks?

I believe the Director has indicated the answer on its face is "no" and that to determine what the dividing line is between full- and part-time employment requires specific factual inquiry. (See attached list of questions for FF guidance I sent Saturday with additions and edits on Monday.)

extremely difficult decisions had to be made to implement the *Welch* decision back in the late 80's through the 90's with very little guidance.

The *Taylor* Court gave specific guidance and directive in 1985 that there is no trial period of unemployment allowance for someone who works FT for six days unless the Legislature specifies otherwise. It has not.

A previous Director ultimately made a policy decision to implement *Welch* in a very broad reaching way in order to solve multiple problems.

I do not recall any such information or request for ALJ input from any previous Director. Does anyone else in Appeals?

The agency essentially used *Welch* to create an ad hoc "trial work period" and applied it to allow individuals who may have taken what would commonly be considered full-time positions provided it was for a short duration.

This flies directly in the face of *Taylor*. See, above.

It should be noted, the *Welch* decision itself cited the purpose of Chapter 96 to be "construed liberally to achieve the objective of minimizing the burden of involuntary unemployment." And it pointed out that the court must look at the evils intended to be remedied and the objects to be accomplished when interpreting the statute. This is further bolstered within the language of *Welch* where the Court specifically stated that the *suitability* of the employment should have been addressed, but the agency failed to raise it prior to the appeal. *Id.* at 152.

One can discuss policy ad nauseum but when the plain language of rule 871-24.27 requires "part-time" employment, that leaves only a fact question of whether the employment quit was FT or PT.

Iowa Admin. Code r. 871-24.25(12) provides for disqualification if an individual quits "without notice during a mutually agreed upon trial period of employment." See also, *Taylor*, where the Court said "he," without reference to the employer, "decided to accept the work on a trial basis." If the rule does not allow benefits after a quit from a *mutually agreed upon* trial period, why would it be allowed from a one-sided trial period?

My point with all of this is that it was not, in my opinion, an unreasonable interpretation for the agency to develop the policy which it did under Director Eisenhauer. It may have been a stretch, but the fact that it was never challenged legally

The Fund is the loser and is represented by the Agency attorney, who implemented this policy. That is why it was never challenged. Few parties appeal UI cases beyond the EAB because of cost/benefit issues.

demonstrates that the policy was a reasonable application of *Welch*. I think the reason that it worked is that full-time and part-time are not defined in the statute so it is up in the air for the agency to determine. If the agency chose to consider anything under 40 hours for less than 30 days as part-time, I think the agency can do this.

The agency cannot do that without a rule. Until then or without a rule, there is enough info in *Taylor*, coupled with factual development of FT or PT in each case, to address the issue.

In my estimation, it probably should have been done through a rule or formal written policy, rather than an informal unwritten policy, if for no other reason than to ensure that the Appeals Bureau was aware of the policy.

Absolutely correct.

For all of these reasons, I advised against lifting this rock. But alas, the rock has been lifted and the snakes are loose.

The only status quo argument made at the A-C meeting was that there were not enough of these cases each year to question Claims' policy as established by the agency attorney's e-mail (attached as a Word doc).

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First claim/benefit year
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Dévon

Message: FW: Part-time Quit

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:31:58 PM
Item ID:	40860899
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Part-time Quit

From Hillary, Teresa [IWD] **Date** Tuesday, May 21, 2013 2:04 PM
To Lewis, Devon [IWD]
Cc

image001.jpg (3 Kb HTML) **Scan_Doc0081.pdf** (1005 Kb HTML) **Part time Quit 319.doc** (45 Kb HTML)

For Thursday meeting.

From: Hillary, Teresa [IWD]
Sent: Tuesday, May 21, 2013 1:05 PM
To: Koonce, Kerry [IWD]
Subject: FW: Part-time Quit

Kerry,

I just wanted you to see this from Ryan, he and Dave Ecklund have both confirmed for me that per legal counsels advice we are allowing someone to work for 28 days (four weeks) and still calling it a part-time quit and giving them benefits. Just plain wrong.

Thanks much
Teresa

From: West, Ryan [IWD]
Sent: Tuesday, May 21, 2013 12:54 PM
To: Hillary, Teresa [IWD]
Subject: Part-time Quit

Hi Teresa,

Sorry I missed you when your meeting was over. I have attached some random 319 documents here "you probably have these". This is what we give the advisors down here. If you have a part-time job under 28 days we are suppose to run the 319 on quits where there are enough wages elsewhere to keep the claim monetarily valid. In my small opinion this is something that needs to be reviewed. As you know we tend to allow claimants who should clearly be denied but don't ever hear about it because we don't charge the employer. Let me know if this is what you were looking for.

Ryan West
Regional Operations Manager
Iowa Workforce Development
(515) 242-0413 P
(515) 281-9321 F

titlegraphic

[Preview is not available (conversion excluded for this file type).]

Image 1

Part-time Quits

If the reason for quitting is a valid reason – attributable to the employer, an allowance decision should be issued. However, if the reason for separation is a disqualifying reason, we can allow quits from part time jobs if the claim remains monetarily valid when remove the wages from the base period. This is because of a court case the 'Welch/McCarthy' ruling. This also applies to part time jobs when all the wages are earned during the lag period. Using this decision (ANDS 319) will set up a voluntary quit disqualification flag for the subsequent benefit year.

- If the claim would become LQE if the wages were removed, then Welch/McCarthy does not apply, and you have to issue a disqualification based on the merits of the case.
- We can't delete wages from CWC, UCX and UCFE claims, so Welch/McCarthy doesn't apply to them, either.

This decision is not optional; as we are required to do all we can to qualify the claimant. If we have to deny and we should use the 319 if we can.

Full time but worked less than four weeks

In looking at both the *Welch* and *McCarthy* cases, the court held that the claimants' reasons for filing for unemployment had been caused by the loss of the regular full-time jobs. In both cases, the claimants would have been separately eligible for unemployment from their "regular" full-time employment without using the wages from the part-time jobs. In each of the cases, the courts directed the Department to relieve the part-time employer of any liability for the benefits paid and to allow the separations. The loss of the part-time jobs did not alter the fact that the unemployment had been caused by the loss of the full time jobs, and applying disqualifications for leaving part-time jobs created a disincentive to supplement their incomes.

Using the same logic, a person who is unemployed due to the loss of a full time job, and then subsequently tries to get off unemployment by taking another full time job, which within a short period of time (less then four weeks) turns out to be not suitable, and then quits that unsuitable job, is not disqualified. The temporary employer is not charged for any benefits paid. The claimant has shown a commitment to becoming re-employed by taking the second job, and should not be penalized for an error in judgment in taking an unsuitable job.

If this is the case, then we can allow benefits if the claim remains monetarily valid after the wages from the short-term job have been removed.

- If the claim would become LQE if the wages were removed, then Welch/McCarthy does not apply, and you have to rule on the merits of the case.
- We can't delete wages from CWC, UCX and UCFE claims, so Welch/McCarthy doesn't apply to them, either.

If the claimant has been allowed benefits under Welch/McCarthy, and then goes to work for covered employment and earns an amount equal to ten times (10X) the WBA, then we would restore the wages to the claim, and then relieve that employer of charges.

If the claimant has not worked anywhere after the part time employment, then we need to review eligibility at the time a second benefit year is filed. The decision causes a "quit disallowed" flag to be created, which will lock the new claim up on a quit. We need to look at the wage credits and:

- Requalify from the quit if we can see proof of earnings in insured work of at least 10 times the WBA
- Remove the wages from the new claim if it allows the claim to remain monetarily eligible and pay benefits
- Issue a "previously adjudicated" denial letter and keep the claim locked up

Final Note:

Always remember to ask if this was the most recent employment. If the claimant quits for cause that is not the fault of the employer, but has worked someplace else, we may be able to requalify the claimant and allow benefits. When our work is reviewed for quality, one thing they look at is if we went the extra mile to qualify the claimant. For example, if you can see from the information on the claims screens that the claimant has worked after the separation date on your issue, you need to investigate further in case the claimant has worked in and been paid wages for insured work equal to ten (10) times the weekly benefit amount. If so, then we can run a requalification and pay the claimant, relieving the former employer of charges.

If you are unable to requalify, and the claimant is disqualified, the following things will happen:

- You will issue the proper ANDS letter
- You will lock the claim, preventing payment
- The decision you enter will also create a "Flag", telling the computer to "lock" any future claims that involve wages from this employer

Iowa Law

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to

both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

b. Reserved.

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual's family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual's regular employer and offered the individual's services and the individual's regular work or comparable work was not available, provided the individual is otherwise eligible.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons

ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph *"a"* of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

h. The individual has left employment in lieu of exercising a right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job.

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph *"b"*. Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of

each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

(1) *"Temporary employee"* means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

2. *"Temporary employment firm"* means a person engaged in the business of employing temporary employees.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

Iowa Administrative Code

871—24.27(96) Voluntary quit of part-time employment and requalification.

An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The

individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

This rule is intended to implement Iowa Code section 96.5(1)*"g."*

Message: FW: Part time quit.

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:31:58 PM
Item ID:	40860898
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Part time quit.

From Hillary, Teresa [IWD] **Date** Tuesday, May 21, 2013 2:05 PM
To Lewis, Devon [IWD]
Cc

For meeting on Thursday.

From: Hillary, Teresa [IWD]
Sent: Tuesday, May 21, 2013 12:19 PM
To: Koonce, Kerry [IWD]
Subject: Part time quit.

"Part time" is not defined by any administrative rule.
The agency has routinely said that someone working 32 or more hours per week is working full time. If an employer advertises a job as full time, hires a claimant who then only works say two eight-hour days, then voluntarily quits without good cause attributable to the employer; Joe Bervid has instructed claims that they should consider that situation as a quit of part-time employment and allow benefits. Without charging the employer, charges revert to the fund. Dave Ecklund who took over claims a couple of years ago and sought to change the way claims was handling these cases. That is someone hired for a full time job who quits, without good cause attributable to the employer after starting the job would no longer be allowed benefits based upon a part-time quit. Joe Bervid over ruled him, met with the fact-finders and instructed them that they **must** treat anyone who works less than four weeks for any employer any amount of hours per week as a quit from part-time employment and allow benefits. Dave Ecklund is more than willing to answer any questions anyone may have about the issue. It appears as though legal counsel has determined that a "short" period of employment is the same as "part-time" employment. If these cases get appealed, ALJ's are routinely reversing because they do not consider "short" employment equivalent to "part-time" employment. The Welch case refers to someone who had a part time job as supplemental employment, not someone who was hired to work full-time then quit. This fight has been going on for years. Joe

Bervid and Joe Walsh seem to be the only real proponents of their interpretation.

I noticed on the agency newsletter that Joe Walsh will be speaking to an employer group on June 11 and specifically has listed on the agenda "part-time quits and temporary assignments."

If you need anything more or a more detailed explanation, pls let me know.

Thanks much
Teresa Hillary

From: Koonce, Kerry [IWD]
Sent: Monday, May 20, 2013 4:27 PM
To: Hillary, Teresa [IWD]
Subject:

Can you get me some bullet points on the part time quit issue?

Kerry Koonce
Communications Director
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319
T: 515-281-9646
F: 515-281-4698
C: 515-681-2230

Message: RE: Part-time Quit

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:31:58 PM
Item ID:	40860901
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

RE: Part-time Quit

From Hillary, Teresa [IWD] **Date** Tuesday, May 21, 2013 2:56 PM
To Lewis, Devon [IWD]
Cc

image001.jpg (3 Kb HTML)

Yep

From: Lewis, Devon [IWD]
Sent: Tuesday, May 21, 2013 2:34 PM
To: Hillary, Teresa [IWD]
Subject: RE: Part-time Quit

I'm assuming you mean working full-time for 28 days and calling it a part-time quit.
Dévon

From: Hillary, Teresa [IWD]
Sent: Tuesday, May 21, 2013 2:04 PM
To: Lewis, Devon [IWD]
Subject: FW: Part-time Quit

For Thursday meeting.

From: Hillary, Teresa [IWD]
Sent: Tuesday, May 21, 2013 1:05 PM
To: Koonce, Kerry [IWD]
Subject: FW: Part-time Quit

Kerry,

I just wanted you to see this from Ryan, he and Dave Ecklund have both confirmed for me that per legal counsels advice we are allowing someone to work for 28 days (four weeks) and still calling it a part-time quit and giving them benefits. Just plain wrong.

Thanks much
Teresa

From: West, Ryan [IWD]
Sent: Tuesday, May 21, 2013 12:54 PM
To: Hillary, Teresa [IWD]
Subject: Part-time Quit

Hi Teresa,

Sorry I missed you when your meeting was over. I have attached some random 319 documents here "you probably have these". This is what we give the advisors down here. If you have a part-time job under 28 days we are suppose to run the 319 on quits where there are enough wages elsewhere to keep the claim monetarily valid. In my small opinion this is something that needs to be reviewed. As you know we tend to allow claimants who should clearly be denied but don't ever hear about it because we don't charge the employer. Let me know if this is what you were looking for.

Ryan West
Regional Operations Manager
Iowa Workforce Development
(515) 242-0413 P
(515) 281-9321 F

titlegraphic

Message: FW: Tomorrow's Agenda

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:00 PM
Item ID:	40860962
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Tomorrow's Agenda

From Hillary, Teresa [IWD] **Date** Thursday, June 06, 2013 9:40 AM
To Wahlert, Teresa [IWD]
Cc

319.Document.pdf (91 Kb HTML) Welch.Decision.pdf (555 Kb HTML)

FYI

From: Walsh, Joseph [IWD]
Sent: Thursday, June 06, 2013 9:36 AM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Subject: Tomorrow's Agenda

Tomorrow's staff meeting is going to be primarily about discussing the *Welch* and *McCarthy* cases and having a dialogue about attempting to more uniformly administer quit provisions. The focus is on the effect of *Welch* in full-time cases. The policy of the agency – going back to Director Eisenhauer – has been to apply *Welch* to cases of temporary employment as well, even if that employment may have been full-time. I assume the scope of our discussion will go beyond that issue because I think it would be a short discussion if that is it. It is my impression that the ALJs would unanimously not apply *Welch* to a true full-time quit (the more interesting debate will be about the definition of full-time vs. part-time). The Director has made it clear that there will be no new rules or legislation. She has assured me as well, during the course of yesterday's meeting, that there will be no informal policy directives set which would require an ALJ to decide any case a certain way. She stated in no uncertain terms, "that would be wrong," in yesterday's meeting.

The Director does want to hear our dialogue on this issue. Please review the attached materials. I

have attached the "319" Decision and *Welch v. Iowa Department of Employment Services*. It is probably worth reviewing *Taylor* and *McCarthy* as well. Devon has also done some research and she will share her memo to the Director with you directly.

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We are going to be doing more of this kind of issue discussion in the future. Therefore, I will be asking a couple of you to take the lead in helping me to strategically prioritize which issues which are truly impactful, as well as the "low hanging fruit." If anyone is interested in this assignment, let me know.

There will be a couple of other agenda items as well and I will try to get some type of official looking agenda out to you sometime today (as well as the minutes from last meeting).

Joseph L. Walsh

Chief Administrative Law Judge
Unemployment Insurance Appeals

1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: (515) 281-8119
joseph.walsh@iwd.iowa.gov

Image 1

Image 1

Image 2

Image 3

Image 4

Image 5

Image 6

Message: FW: Tomorrow's Agenda

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:00 PM
Item ID:	40860963
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Tomorrow's Agenda

From Hillary, Teresa [IWD] **Date** Thursday, June 06, 2013 9:48 AM
To Wahlert, Teresa [IWD]
Cc

319.Document.pdf (91 Kb HTML) **Welch.Decision.pdf** (555 Kb HTML)

From: Hillary, Teresa [IWD]
Sent: Thursday, June 06, 2013 9:47 AM
To: Olivencia, Nicholas [IWD]
Subject: FW: Tomorrow's Agenda

Nick,

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Thanks much
Teresa Hillary

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Sent: Thursday, June 06, 2013 9:36 AM
To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeyer, Bonny

[IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Seeck, Vicki [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
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Image 1

Image 1

Image 2

Image 3

Image 4

Image 5

Image 6

Message: FW: Tomorrow's Agenda

Case Information:

Message Type:	Exchange
Message Direction:	Internal
Case:	IWD Senator Petersen Request - Version 3
Capture Date:	7/10/2014 1:32:00 PM
Item ID:	40860965
Policy Action:	Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

FW: Tomorrow's Agenda

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To Lewis, Devon [IWD]
Cc

319.Document.pdf (91 Kb HTML) **Welch.Decision.pdf** (555 Kb HTML)

hmmmm

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