

Message: Part-time quit "policy" additional information.**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:31:59 PM
 Item ID: 40860945
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Part-time quit "policy" additional information.**

From Lewis, Devon [IWD] **Date** Friday, May 31, 2013 1:02 PM
To Wahlert, Teresa [IWD]
Cc Walsh, Joseph [IWD]

Director Wahlert,

I just received this e-mail and thought you might be interested given your earlier request for information about how long the "policy" has been in place. Note the date is November 2010. Ms. Piagentini specifically recalled it being implemented about the time the call center was put in place (from local office fact-finding) in 1999. I recall reversing claims decisions that allowed benefits for quits of short-term full-time employment throughout my employment. ALJs have consistently held that "part-time" work does not have a bright line definition and is a fact question as outlined in the earlier e-mail about *Welch, McCarthy, and Taylor* decisions, which involve policy and legislative intent analysis. From a legal perspective, a "question of fact" does not mean that Claims' formulaic interpretation of working 40 or fewer hours for 4 to 8 weeks is an accurate definition. It involves evidence gathering of the parties' intention, job description, advertisement, application, employment history, any agreement about a trial period of employment, etc.

This is relevant statute and rule language:

Iowa Code § 96.3 (6) defines part-time workers:

- a. As used in this subsection the term "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.
- 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. (Emphasis added.)

Iowa Admin. Code r. 871-24.27 provides:

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.

Please let me know if you have further questions.

Devon

Devon M. Lewis

Administrative Law Judge
Iowa Workforce Development
1000 E Grand Ave
Des Moines IA 50319-0209
515.281.3747
800.532.1483
devon.lewis@iwd.iowa.gov

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From: Piagentini, Mary [IWD]
Sent: Friday, May 31, 2013 11:52 AM
To: Lewis, Devon [IWD]
Subject: FW: Part-time Temporary Quits

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....

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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

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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.

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Message Type: Exchange
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 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:31:59 PM
 Item ID: 40860946
 Policy Action: Not Specified

Mark History:

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Policies:

No Policies attached

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From Lewis, Devon [IWD] **Date** Friday, May 31, 2013 1:02 PM
To Hillary, Teresa [IWD]
Cc

From: Lewis, Devon [IWD]
Sent: Friday, May 31, 2013 1:02 PM
To: Wahlert, Teresa [IWD]
Cc: Walsh, Joseph [IWD]
Subject: Part-time quit "policy" additional information.

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From: Piagentini, Mary [IWD]
Sent: Friday, May 31, 2013 11:52 AM
To: Lewis, Devon [IWD]
Subject: FW: Part-time Temporary Quits

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

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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

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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.

Message: Snyder stipulation, PT Quit - Welch, McCarthy info sent to Director Wahlert per her request

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:31:59 PM
Item ID: 40860948
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ Snyder stipulation, PT Quit - Welch, McCarthy info sent to Director Wahlert per her request**From** Lewis, Devon [IWD]**Date**
Friday, May
31, 2013
1:42 PM**To** Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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**

 [TW Memo PT Q 5-28-13.doc](#) (32 Kb HTML)  [TW Memo Snyder 5-28-13.doc](#) (32 Kb HTML)

Joe has this too but thought you might be interested.

Devon

MEMO

To: IWD Director Teresa Wahlert

From: Dévon M. Lewis, ALJ II

Date: May 28, 2013

Re: Welch and McCarthy cases – Part-time quit issue

McCarthy v. Iowa Emp't Sec. Comm'n, 247 Iowa 760, 76 N.W.2d 201 (1956). McCarthy worked full-time for a produce company and worked an “extra, part-time job” for a bowling alley for a “limited” period (7 or 8 weeks) and quit because “he found combined jobs too heavy.” Shortly thereafter and before requalification, the produce company laid him off. The Court held that disqualification should not apply to the *concurrent* part-time separation because the part-time work did not create the unemployment. It directed the commission to develop rules adopt rules to address charges or relief therefrom to full- and part-time employers.

Welch v. Iowa Dep't Emp't Servs., 421 NW2d 150 (Iowa Ct. App. 1988). Welch worked full-time for Oscar Mayer and was separated in May 1983. After a period of severance pay he began receiving full UI benefits in January 1984. He began part-time employment with the City of Minburn in May 1984 and began receiving partial UI benefits, still based upon his wage credits at Oscar Mayer. Welch quit the part-time work in January 1985 to move to Arizona and seek full-time employment.

The Court declined to make a distinction between a first and second benefit year entitlement. It relied heavily on the *McCarthy* rationale and said a total separation disqualification applies to the “primary” or “regular” employment that caused the original unemployment and relieving that employer would give it an “undue benefit.” It identified policy considerations to resolve the issue and held that the statute allows for a monetary incentive for unemployed workers to supplement their benefits by seeking “supplemental part-time work” and disqualification would serve as punishment. The identified legislative intent was to provide claimants an incentive to supplement their benefits with part-time work while allowing them to seek and remain available for regular full-time work and noted this allows an employee to end up with more income than if he did not work while not fearing risk of total benefit loss if quitting part-time work.

It observed the separation from Oscar Mayer continued throughout the claim and

his separation from part-time work with Minburn “changed his status from partially unemployed to totally unemployed, not from employed to unemployed.” The partial UI benefits reduced the charges to Oscar Mayer but did not remove the fact of the initial cause of unemployment. Because the part-time wage credits are removed from the base period until requalification, the part-time employer is not penalized.

Throughout the decisions the Court used or referred to phrases like “comparatively minor evening part-time job,” “sideline,” “optional part-time work,” “primary, principal, or full-time employment” and “regular full-time employment.” At no point did the Court, or other states’ courts mentioned in the decision, refer to this being a substitute for short-term or a trial period of employment, or as a mechanism to determine suitability of work. An allowance of benefits after quitting short-term, full-time employment would seem to encourage a claimant to use it as a one-sided, no-penalty trial period of employment. 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.” In fact, 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. Taylor argued disqualification would be unfair because he went the extra mile in searching for gainful employment. The Court specifically declined to carve out a judicial exception to the existing statute to give special protection to persons who were drawing UI benefits prior to accepting inappropriate employment and left that to the legislature, which has declined to amend the statute.

I have other brief arguments based upon current rules but have limited the discussion to case law. If you wish to have further analysis based upon Department rules, please advise.

DML

Message: FW: Part-time quit "policy" additional information.**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:31:59 PM
 Item ID: 40860949
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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From	Lewis, Devon [IWD]	Date
		Friday, May 31, 2013 1:45 PM
To	Scheetz, Beth [IWD]; Hendricksmeier, Bonny [IWD]; Wise, Debra [IWD]; Timberland, James [IWD]; Elder, Julie [IWD]; Donner, Lynette [IWD]; Mormann, Marlon [IWD]; Stephenson, Randall [IWD]; Wise, Steve [IWD]; Ackerman, Susan [IWD]; Nice, Terence [IWD]; Hillary, Teresa [IWD]; Seeck, Vicki [IWD]	
Cc		

Again, FYI

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Sent: Friday, May 31, 2013 1:02 PM
To: Wahlert, Teresa [IWD]
Cc: Walsh, Joseph [IWD]
Subject: Part-time quit "policy" additional information.

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analysis. From a legal perspective, a "question of fact" does not mean that Claims' formulaic interpretation of working 40 or fewer hours for 4 to 8 weeks is an accurate definition. It involves evidence gathering of the parties' intention, job description, advertisement, application, employment history, any agreement about a trial period of employment, etc.

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From: Piagentini, Mary [IWD]
Sent: Friday, May 31, 2013 11:52 AM
To: Lewis, Devon [IWD]
Subject: FW: Part-time Temporary Quits

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

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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]
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Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:31:59 PM
Item ID: 40860952
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Part-time quit "policy" additional information.

From Lewis, Devon [IWD] **Date** Friday, May 31, 2013 2:39 PM
To Hillary, Teresa [IWD]
Cc

From: Wahlert, Teresa [IWD]
Sent: Friday, May 31, 2013 2:39 PM
To: Lewis, Devon [IWD]
Cc: Walsh, Joseph [IWD]
Subject: Re: Part-time quit "policy" additional information.

Thank you we will discuss next week

- Teresa Wahlert

On May 31, 2013, at 1:01 PM, "Lewis, Devon [IWD]" <Devon.Lewis@iwd.iowa.gov> wrote:

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To: Lainson, GERALYN [IWD]; Gilkison, Judy [IWD]; Putzier, Juli [IWD]; Piagentini, Mary [IWD]; Jergenson, Kathy [IWD]; Van Syoc, Jim [IWD]; Shenk, Jim [IWD]
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Cc: Wilkinson, Michael [IWD]
Subject: Part-time Temporary Quits

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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: 40860933
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Part time quit.**

From Lewis, Devon [IWD] **Date** Thursday, May 30, 2013 4:04 PM
To Hillary, Teresa [IWD]
Cc

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This is all I could find. No bright line definition or even guideline so that makes it a fact question.

From: Hillary, Teresa [IWD]
Sent: Tuesday, May 21, 2013 2:05 PM
To: Lewis, Devon [IWD]
Subject: FW: Part time quit.

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: Welch, McCarthy - PT Quit Memo**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: 40860910
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Welch, McCarthy - PT Quit Memo**

From Lewis, Devon [IWD] **Date** Wednesday, May 29, 2013 12:07 AM
To Wahlert, Teresa [IWD]
Cc

MEMO

To: IWD Director Teresa Wahlert
 From: Dévon M. Lewis, ALJ II
 Date: May 28, 2013
 Re: Welch and McCarthy cases – Part-time quit issue

McCarthy v. Iowa Emp't Sec. Comm'n, 247 Iowa 760, 76 N.W.2d 201 (1956). McCarthy worked full-time for a produce company and worked an "extra, part-time job" for a bowling alley for a "limited" period (7 or 8 weeks) and quit because "he found combined jobs too heavy." Shortly thereafter and before requalification, the produce company laid him off. The Court held that disqualification should not apply to the *concurrent* part-time separation because the part-time work did not create the unemployment. It directed the commission to develop rules adopt rules to address charges or relief therefrom to full- and part-time employers.

Welch v. Iowa Dep't Emp't Servs., 421 NW2d 150 (Iowa Ct. App. 1988). Welch worked full-time for Oscar Mayer and was separated in May 1983. After a period of severance pay he began receiving full UI benefits in January 1984. He began part-time employment with the City of Minburn in May 1984 and began receiving partial UI benefits, still based upon his

wage credits at Oscar Mayer. Welch quit the part-time work in January 1985 to move to Arizona and seek full-time employment.

The Court declined to make a distinction between a first and second benefit year entitlement. It relied heavily on the *McCarthy* rationale and said a total separation disqualification applies to the “primary” or “regular” employment that caused the original unemployment and relieving that employer would give it an “undue benefit.” It identified policy considerations to resolve the issue and held that the statute allows for a monetary incentive for unemployed workers to supplement their benefits by seeking “supplemental part-time work” and disqualification would serve as punishment. The identified legislative intent was to provide claimants an incentive to supplement their benefits with part-time work while allowing them to seek and remain available for regular full-time work and noted this allows an employee to end up with more income than if he did not work while not fearing risk of total benefit loss if quitting part-time work.

It observed the separation from Oscar Mayer continued throughout the claim and his separation from part-time work with Minburn “changed his status from partially unemployed to totally unemployed, not from employed to unemployed.” The partial UI benefits reduced the charges to Oscar Mayer but did not remove the fact of the initial cause of unemployment. Because the part-time wage credits are removed from the base period until requalification, the part-time employer is not penalized.

Throughout the decisions the Court used or referred to phrases like “comparatively minor evening part-time job,” “sideline,” “optional part-time work,” “primary, principal, or full-time employment” and “regular full-time employment.” At no point did the Court, or other states’ courts mentioned in the decision, refer to this being a substitute for short-term or a trial period of employment, or as a mechanism to determine suitability of work. An allowance of benefits after quitting short-term, full-time employment would seem to encourage a claimant to use it as a one-sided, no-penalty trial period of employment. 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.” In fact, 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. Taylor argued disqualification would be unfair because he went the extra mile in searching for gainful employment. The Court specifically declined to carve out a judicial exception to the existing statute to give special protection to persons who were drawing UI benefits prior to accepting inappropriate employment and left that to the

legislature, which has declined to amend the statute.

I have other brief arguments based upon current rules but have limited the discussion to case law. If you wish to have further analysis based upon Department rules, please advise.

DML

Dévon

Message: RE: Welch, McCarthy - PT Quit Memo**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: 40860920
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Welch, McCarthy - PT Quit Memo**

From Lewis, Devon [IWD] **Date** Wednesday, May 29, 2013 10:04 AM
To Wahlert, Teresa [IWD]
Cc

As long as I've been here – 21 years July 1.

From: Wahlert, Teresa [IWD]
Sent: Wednesday, May 29, 2013 10:03 AM
To: Lewis, Devon [IWD]
Subject: RE: Welch, McCarthy - PT Quit Memo

How long has the “policy” for PT quit been in place?

From: Lewis, Devon [IWD]
Sent: Wednesday, May 29, 2013 12:07 AM
To: Wahlert, Teresa [IWD]
Subject: Welch, McCarthy - PT Quit Memo

MEMO

To: IWD Director Teresa Wahlert
 From: Dévon M. Lewis, ALJ II
 Date: May 28, 2013
 Re: Welch and McCarthy cases – Part-time quit issue

McCarthy v. Iowa Emp't Sec. Comm'n, 247 Iowa 760, 76 N.W.2d 201 (1956). McCarthy worked full-time for a produce company and worked an “extra, part-time job” for a bowling

alley for a "limited" period (7 or 8 weeks) and quit because "he found combined jobs too heavy." Shortly thereafter and before requalification, the produce company laid him off. The Court held that disqualification should not apply to the *concurrent* part-time separation because the part-time work did not create the unemployment. It directed the commission to develop rules adopt rules to address charges or relief therefrom to full- and part-time employers.

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The Court declined to make a distinction between a first and second benefit year entitlement. It relied heavily on the *McCarthy* rationale and said a total separation disqualification applies to the "primary" or "regular" employment that caused the original unemployment and relieving that employer would give it an "undue benefit." It identified policy considerations to resolve the issue and held that the statute allows for a monetary incentive for unemployed workers to supplement their benefits by seeking "supplemental part-time work" and disqualification would serve as punishment. The identified legislative intent was to provide claimants an incentive to supplement their benefits with part-time work while allowing them to seek and remain available for regular full-time work and noted this allows an employee to end up with more income than if he did not work while not fearing risk of total benefit loss if quitting part-time work.

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after quitting short-term, full-time employment would seem to encourage a claimant to use it as a one-sided, no-penalty trial period of employment. 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." In fact, 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. Taylor argued disqualification would be unfair because he went the extra mile in searching for gainful employment. The Court specifically declined to carve out a judicial exception to the existing statute to give special protection to persons who were drawing UI benefits prior to accepting inappropriate employment and left that to the legislature, which has declined to amend the statute.

I have other brief arguments based upon current rules but have limited the discussion to case law. If you wish to have further analysis based upon Department rules, please advise.

DML

Dévon

Message: FW: Welch, McCarthy - PT Quit Memo

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: 40860921
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Welch, McCarthy - PT Quit Memo

From Lewis, Devon [IWD] **Date** Wednesday, May 29, 2013 10:39 AM
To Hillary, Teresa [IWD]
Cc

From: Lewis, Devon [IWD]
Sent: Wednesday, May 29, 2013 10:04 AM
To: Wahlert, Teresa [IWD]
Subject: RE: Welch, McCarthy - PT Quit Memo

As long as I've been here – 21 years July 1.

From: Wahlert, Teresa [IWD]
Sent: Wednesday, May 29, 2013 10:03 AM
To: Lewis, Devon [IWD]
Subject: RE: Welch, McCarthy - PT Quit Memo

How long has the "policy" for PT quit been in place?

From: Lewis, Devon [IWD]
Sent: Wednesday, May 29, 2013 12:07 AM
To: Wahlert, Teresa [IWD]
Subject: Welch, McCarthy - PT Quit Memo

MEMO

To: IWD Director Teresa Wahlert

From: Dévon M. Lewis, ALJ II

Date: May 28, 2013

Re: Welch and McCarthy cases – Part-time quit issue

McCarthy v. Iowa Emp't Sec. Comm'n, 247 Iowa 760, 76 N.W.2d 201 (1956). McCarthy worked full-time for a produce company and worked an "extra, part-time job" for a bowling alley for a "limited" period (7 or 8 weeks) and quit because "he found combined jobs too heavy." Shortly thereafter and before requalification, the produce company laid him off. The Court held that disqualification should not apply to the *concurrent* part-time separation because the part-time work did not create the unemployment. It directed the commission to develop rules adopt rules to address charges or relief therefrom to full- and part-time employers.

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I have other brief arguments based upon current rules but have limited the discussion to case law. If you wish to have further analysis based upon Department rules, please advise.

DML

Dévon

Message: FW: Can we amend ref code 41 to be as follows?**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:36 PM
 Item ID: 40861837
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ FW: Can we amend ref code 41 to be as follows?

From Lewis, Devon [IWD] **Date** Saturday, March 29, 2014 5:45 PM
To Koonce, Kerry [IWD]
Cc

From: Lewis, Devon [IWD]
Sent: Wednesday, August 21, 2013 10:56 AM
To: Ackerman, Susan [IWD]
Cc: Donner, Lynette [IWD]; Wise, Steve [IWD]; Hillary, Teresa [IWD]
Subject: RE: Can we amend ref code 41 to be as follows?

Thank you both – your opinions and input are important.

From: Ackerman, Susan [IWD]
Sent: Wednesday, August 21, 2013 10:55 AM
To: Lewis, Devon [IWD]
Cc: Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]
Subject: RE: Can we amend ref code 41 to be as follows?

This was actually Lynette's modification, I am just pushing it.

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: Lewis, Devon [IWD]
Sent: Wednesday, August 21, 2013 10:47 AM
To: Ackerman, Susan [IWD]; Scott, Cheryl [IWD]; Shroyer, Paula [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]
Subject: RE: Can we amend ref code 41 to be as follows?

Good suggestion, Susan. Steve, Teresa, and Deb, your thoughts?

From: Ackerman, Susan [IWD]
Sent: Wednesday, August 21, 2013 10:40 AM
To: Scott, Cheryl [IWD]; Shroyer, Paula [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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: Can we amend ref code 41 to be as follows?

It's my understanding we don't use ref code 41 anymore? Could we change it to reflect the following so that we could use this for reversals of non-separation cases.....

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

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

Message: RE: 41, 41A and 41B

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861439
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: 41, 41A and 41B**

From Lewis, Devon [IWD] **Date** Wednesday, August 21, 2013 2:03 PM
To Wise, Steve [IWD]; Shroyer, Paula [IWD]; Scott, Cheryl [IWD]
Cc Hillary, Teresa [IWD]

[Me too](#)

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 2:03 PM
To: Shroyer, Paula [IWD]; Scott, Cheryl [IWD]
Cc: Hillary, Teresa [IWD]; Lewis, Devon [IWD]
Subject: RE: 41, 41A and 41B

[Looks fine to me.](#)

From: Shroyer, Paula [IWD]
Sent: Wednesday, August 21, 2013 1:29 PM
To: Wise, Steve [IWD]; Scott, Cheryl [IWD]
Cc: Hillary, Teresa [IWD]; Lewis, Devon [IWD]
Subject: RE: 41, 41A and 41B

[Sorry..I just wanted to be sure we were on same page...so here is what I have saved as 41 ref.... thanks!](#)

[Iowa Code § 96.3-7 provides in pertinent part:](#)

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 12:58 PM
To: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]
Cc: Hillary, Teresa [IWD]; Lewis, Devon [IWD]
Subject: RE: 41, 41A and 41B

Please revise Reference 41 as requested. We will take care of instructing ALJs on using the correct reference codes for overpayment cases.

From: Shroyer, Paula [IWD]
Sent: Wednesday, August 21, 2013 12:20 PM
To: Wise, Steve [IWD]
Subject: RE: 41, 41A and 41B

So Steve, this is 41 ref ?? NOT 41a? and some aljs never knew there was a 41a – always used 41 ..I am sure some of them are confused and I know Cheryll & I are..

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 12:17 PM
To: Donner, Lynette [IWD]; Hendricksmeier, Bonny [IWD]; Ackerman, Susan [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]
Cc: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]
Subject: RE: 41, 41A and 41B

Susan had sent out a revised Reference 41 to deal with non-separation overpayments. Everyone on the original email was sent to agreed that it makes sense. We have a consensus then that Reference 41 should be revised and used with non-separation overpayments. Word Processing should make the revision. I have more stuff coming on separation overpayments soon, just not

enough time between hearings to get it out.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

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From: Donner, Lynette [IWD]

Sent: Wednesday, August 21, 2013 11:29 AM

To: Hendricksmeier, Bonny [IWD]; Ackerman, Susan [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: UI

Subject: RE: 41, 41A and 41B

[That would be the proposed revised 41 as distributed by Susan.](#)

From: Hendricksmeier, Bonny [IWD]

Sent: Wednesday, August 21, 2013 11:24 AM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: UI

Subject: 41, 41A and 41B

I'm getting really confused now.

I understand 41B is to be used when the ALJ reverses an allowance of benefits from the FF. That is when the issue of whether the ER participated is relevant.

Which reference code do we use when the overpayment decision is the result of a FF on issues such as A&A, Work Refusal or some other non-separation case?

Message: RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861434
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

From Lewis, Devon [IWD] **Date** Wednesday, August 21, 2013
 1:20 PM
To Wise, Steve [IWD]; Hillary,
 Teresa [IWD]
Cc

[Yes – thanks!](#)

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 1:04 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Subject: PROCEDURES FOR HANDLING § 96.3-7-b CASES

Devon and Tere. So I think this should be sent out to ALJs, WP, and Support Staff. Agree?

Here is the full process flow (and attached) that Appeals in consultation with the UI Division has come up with. It includes information on intake, what the UI Division will be doing, and types of appeals we will be handling, and what will be decided based on the type of case. Let me know if you have any questions.

PROCEDURES FOR HANDLING § 96.3-7-b CASES

During the fact-finding interview, fact finder will make a determination on whether the employer participated in the fact-finding interview or not. This will be noted on Notice of UI Fact-finding Interview page (SIR). A check box will be created for this along with one that designates the employer as a base-period employer. UI Division

will share a copy of the revised Notice so we can readily pick this out.

For an **Employer Appeal** of a **Decision Granting Benefits** to the claimant in a **Separation Case**.

1. If the **Separation Decision** that comes before the ALJ was issued **July 2, 2013, or later** the process the ALJ will follow depends on whether the employer was a **Base-Period Employer or not**.
2. If the employer was a **Base Period Employer**.
 - a. The issue will be the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** “Should benefits be repaid by claimant or charged to the employer due to employer’s participation in the fact finding? Law § 96.3-7 & 871 IAC 24.50-7.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
 - d. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits and (3) the employer is not relieved of benefit charges because the employer failed to participate. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code in this manner.
 - ii. If the claimant and employer agree that the employer participated in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code and automatically set up the overpayment.
 - iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents

to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant or charged to the employer due to employer's participation in the fact finding. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the employer will be charged and if the overpayment will be waived.

3. If the employer was a **Non-Base Period Employer**.

- a. Charges to the employer are not involved in these type of cases where there is an overpayment.
- b. The issue will be as now the separation issues of discharge and quit and “Whether the claimant was overpaid and Normal Law §§, 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** Should benefits be repaid by claimant due to employer's participation in the fact finding? Law § 96.3-7 and 871 IAC 24.50-7.
- c. Administrative file does not have to be sent out unless requested by a party.
- d. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
- e. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits.
 - ii. If the claimant and employer agree that the employer participated in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated.
 - iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding

the employers participation and if the overpayment will be waived.

4. If the **Separation Decision** was issued **July 1, 2013, or before** there is no change in what is being done.
 - a. The issue will be as now the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. These cases **do not** involve the issue of whether the employer is to be charged for the overpayment.
 - d. ALJ can remand as before on the issue of amount of the overpayment and whether repayment of the overpayment is required.

Message: RE: Can we amend ref code 41 to be as follows?

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:14 PM
Item ID: 40861429
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Can we amend ref code 41 to be as follows?

From Lewis, Devon [IWD] **Date** Wednesday, August 21, 2013 10:56 AM
To Ackerman, Susan [IWD]
Cc Donner, Lynette [IWD]; Wise, Steve [IWD]; Hillary, Teresa [IWD]

Thank you both – your opinions and input are important.

From: Ackerman, Susan [IWD]
Sent: Wednesday, August 21, 2013 10:55 AM
To: Lewis, Devon [IWD]
Cc: Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]
Subject: RE: Can we amend ref code 41 to be as follows?

This was actually Lynette's modification, I am just pushing it.

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: Lewis, Devon [IWD]
Sent: Wednesday, August 21, 2013 10:47 AM
To: Ackerman, Susan [IWD]; Scott, Cheryll [IWD]; Shroyer, Paula [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]
Subject: RE: Can we amend ref code 41 to be as follows?

Good suggestion, Susan. Steve, Teresa, and Deb, your thoughts?

From: Ackerman, Susan [IWD]
Sent: Wednesday, August 21, 2013 10:40 AM
To: Scott, Cheryll [IWD]; Shroyer, Paula [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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: Can we amend ref code 41 to be as follows?

It's my understanding we don't use ref code 41 anymore? Could we change it to reflect the following so that we could use this for reversals of non-separation cases.....

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

Administrative Law Judge Susan Ackerman

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1000 East Grand Avenue
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Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861427
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

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Iowa Unemployment Insurance Appeals

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Des Moines, Iowa 50319

Phone: (515) 281-3747

Fax: (515) 242-5144

Susan.ackerman@iwd.iowa.gov

Message: RE: 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: 40860991
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Tomorrow's Agenda**

From Lewis, Devon [IWD] **Date** Friday, June 07, 2013 9:35 AM
To Wise, Steve [IWD]
Cc

Thanks Steve. I'll make sure this is covered in the meeting.

From: Wise, Steve [IWD]
Sent: Friday, June 07, 2013 8:08 AM
To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]
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McCarthy involved a claimant working a full-time job and part-time job simultaneously. He quit the part-time job two months before being laid off his full-time job. He hadn't earned enough wages after the part-time quit to requalify when he filed for UI benefits. Supreme Court ruled the layoff from the full-time job was the cause of his unemployment when he applied for UI and allowed the claimant to draw benefits from his full-time employer and removed the wages from the part-time employer from the claim.

Welch involved a claimant who filed for benefits after he was separated from his regular full-time job. After receiving benefits for 5 months, he took a part-time job to supplement his benefits and received partial unemployment benefits. He later quit the part-time job to move out of state. He filed for a second benefit year with both his full time and his part-time employers as base-period

employers. Court of Appeals extended the ruling of McCarthy to a voluntarily quit of the part-time job accepted after a separation from a full-time job and allows benefits based wages from the full-time employer and removed the wages from the part-time employer from the claim.

Taylor involved a claimant who filed a claim for benefits after a his separation from full-time work as an asbestos worker. After drawing UI benefits for a period of time, he took a full-time job with an excavating company but quit after 6 days alleging illness, change in contract, and unsafe working conditions and reapplied for UI benefits. The claimant's primary argument was that he should've been allowed to quit the job after working a short trial period without disqualification if he determined the job was unsuitable. As Devon emphasizes in her memo, the Supreme Court rejects this argument and says it's up to the legislature to carve out such an exception. Ultimately, the Court remanded on the good cause issue. But unquestionably, the Iowa Supreme Court held a claimant can't try out a full-time job for a short period of time and then quit without being disqualified (assuming no good cause for the quit)—even when the claimant was drawing benefits from other employers and even though he takes the initiative to get off unemployment to accept job. Every argument found in attached "Part time Quit 319.doc" for not disqualifying a claimant who quits a full-time job lasting less than 4 weeks were explicitly rejected in Taylor v. Iowa Dept. of Job Service.

From: Lewis, Devon [IWD]

Sent: Thursday, June 06, 2013 9:55 AM

To: Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]

Subject: RE: Tomorrow's Agenda

The 319 is from Claims' info. The other info I've compiled. Joe also raised a caution about illegal rulemaking yesterday cautioning against an informal agency policy. The Director agrees and seems to want a 'question of fact' approach. With that in mind, the 319 doc and the following seem to create that informal agency policy.

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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 required 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.

From: Walsh, Joseph [IWD]

Sent: Thursday, June 06, 2013 9:36 AM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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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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 Eisenhower – 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.

Please also review the following statutes/rules and anything else you feel is appropriate:

Iowa Code § 96.3 (6) defines part-time workers:

- a. As used in this subsection the term "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.
- 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.

Iowa Admin. Code r. 871-24.27 provides:

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.

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

Message: Steve Wise's input on PT quits - full-time hours of short-term duration**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: 40860992
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **Steve Wise's input on PT quits - full-time hours of short-term duration**

From Lewis, Devon [IWD] **Date** Friday, June 07, 2013 9:46 AM

To Olivencia, Nicholas [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]; West, Ryan [IWD]; Bervid, Joseph [IWD]; Wahlert, Teresa [IWD]

Cc

Joe and the ALJs have this but thought you'd like to see Steve's perspective, which is consistent with the rest of us.

From: Wise, Steve [IWD]
Sent: Friday, June 07, 2013 8:08 AM
To: Lewis, Devon [IWD]; Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]
Subject: RE: Tomorrow's Agenda

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Message: RE: 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: 40860964
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: Tomorrow's Agenda

From Lewis, Devon [IWD]

Date
 Thursday,
 June 06, 2013
 9:55 AM

To Walsh, Joseph [IWD]; Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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

[Part time Quit 319.doc](#) (45 Kb HTML) [PT Quit arguments.doc](#) (29 Kb HTML) [PT Worker definition.doc](#) (30 Kb HTML) [TW Memo PT Q 5-28-13.doc](#) (32 Kb HTML)

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- [\[Heading 1\]](#)
 - [\[Part-time QuitsIf the reason for ...\]](#)
 - [\[Iowa Law\]](#)

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 than 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.”

PT Quit

Other arguments:

An employee may be allowed benefits if they quit because of a change in the terms of hire; due to unsafe, unlawful, intolerable or detrimental working conditions; or if the type of work was misrepresented; among others. Iowa Admin. Code r. 871-24.26(1),(2),(3),(4) and (23). Allowing benefits in the claims scenario would penalize the original employer that caused the employment to continue paying for benefits beyond the period it would normally take the claimant to find suitable employment. It would also penalize the new, full-time employer who had selected and begun to train the employee to the exclusion of other interviewees. Although it would not be charged, it would have to begin the process to search for a permanent, full-time employee again. The application and interview process, and less often, a trial period, are traditionally used for determining suitability of employment. When a claimant is partially unemployed (full-time wage history, but working only part-time) they are to report gross wages for each week worked and had reduced benefits calculated accordingly. As Bervid currently directs claims to apply separation from part-time employment, the claimant has been claiming either full or partial benefits and then discontinues claiming benefits for a period up to 8 weeks while working the new full-time job before quitting and filing again. This alone evinces an intention to discontinue UI benefits for regular full-time, rather than part-time or supplemental, employment.

Iowa Code § 96.3 (6) defines part-time workers:

a. As used in this subsection the term “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.

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.

Iowa Admin. Code r. 871-24.27 provides:

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.

Message: Re: Part-time quit "policy" additional information.

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:31:59 PM
Item ID: 40860951
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ Re: Part-time quit "policy" additional information.

From Wahlert, Teresa [IWD] **Date** Friday, May 31, 2013 2:39 PM
To Lewis, Devon [IWD]
Cc Walsh, Joseph [IWD]

Thank you we will discuss next week

- Teresa Wahlert

On May 31, 2013, at 1:01 PM, "Lewis, Devon [IWD]" <Devon.Lewis@iwd.iowa.gov> wrote:

Director Wahlert,

I just received this e-mail and thought you might be interested given your earlier request for information about how long the "policy" has been in place. Note the date is November 2010. Ms. Piagentini specifically recalled it being implemented about the time the call center was put in place (from local office fact-finding) in 1999. I recall reversing claims decisions that allowed benefits for quits of short-term full-time employment throughout my employment. ALJs have consistently held that "part-time" work does not have a bright line definition and is a fact question as outlined in the earlier e-mail about *Welch*, *McCarthy*, and *Taylor* decisions, which involve policy and legislative intent analysis. From a legal perspective, a "question of fact" does not mean that Claims' formulaic interpretation of working 40 or fewer hours for 4 to 8 weeks is an accurate definition. It involves evidence gathering of the parties' intention, job description, advertisement, application, employment history, any agreement about a trial period of employment, etc.

This is relevant statute and rule language:

Iowa Code § 96.3 (6) defines part-time workers:

a. As used in this subsection the term "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.

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. (Emphasis added.)

Iowa Admin. Code r. 871-24.27 provides:

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.

Please let me know if you have further questions.

Devon

Devon M. Lewis

Administrative Law Judge
Iowa Workforce Development
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515.281.3747
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distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error and then delete it. Thank you.

From: Piagentini, Mary [IWD]
Sent: Friday, May 31, 2013 11:52 AM
To: Lewis, Devon [IWD]
Subject: FW: Part-time Temporary Quits

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 regul. 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.

Message: RE: Welch, McCarthy - PT Quit Memo**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: 40860918
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Welch, McCarthy - PT Quit Memo**

From Wahlert, Teresa [IWD] **Date** Wednesday, May 29, 2013 9:14 AM
To Lewis, Devon [IWD]
Cc

[thanks](#)

From: Lewis, Devon [IWD]
Sent: Wednesday, May 29, 2013 12:07 AM
To: Wahlert, Teresa [IWD]
Subject: Welch, McCarthy - PT Quit Memo

MEMO

To: IWD Director Teresa Wahlert
 From: Dévon M. Lewis, ALJ II
 Date: May 28, 2013
 Re: Welch and McCarthy cases – Part-time quit issue

McCarthy v. Iowa Emp't Sec. Comm'n, 247 Iowa 760, 76 N.W.2d 201 (1956). McCarthy worked full-time for a produce company and worked an "extra, part-time job" for a bowling alley for a "limited" period (7 or 8 weeks) and quit because "he found combined jobs too heavy." Shortly thereafter and before requalification, the produce company laid him off. The Court held that disqualification should not apply to the *concurrent* part-time separation because the part-time work did not create the unemployment. It directed the commission to develop rules adopt rules to address charges or relief therefrom to full- and part-time employers.

Welch v. Iowa Dep't Emp't Servs., 421 NW2d 150 (Iowa Ct. App. 1988). Welch worked full-time for Oscar Mayer and was separated in May 1983. After a period of severance pay he began receiving full UI benefits in January 1984. He began part-time employment with the City of Minburn in May 1984 and began receiving partial UI benefits, still based upon his wage credits at Oscar Mayer. Welch quit the part-time work in January 1985 to move to Arizona and seek full-time employment.

The Court declined to make a distinction between a first and second benefit year entitlement. It relied heavily on the *McCarthy* rationale and said a total separation disqualification applies to the "primary" or "regular" employment that caused the original unemployment and relieving that employer would give it an "undue benefit." It identified policy considerations to resolve the issue and held that the statute allows for a monetary incentive for unemployed workers to supplement their benefits by seeking "supplemental part-time work" and disqualification would serve as punishment. The identified legislative intent was to provide claimants an incentive to supplement their benefits with part-time work while allowing them to seek and remain available for regular full-time work and noted this allows an employee to end up with more income than if he did not work while not fearing risk of total benefit loss if quitting part-time work.

It observed the separation from Oscar Mayer continued throughout the claim and his separation from part-time work with Minburn "changed his status from partially unemployed to totally unemployed, not from employed to unemployed." The partial UI benefits reduced the charges to Oscar Mayer but did not remove the fact of the initial cause of unemployment. Because the part-time wage credits are removed from the base period until requalification, the part-time employer is not penalized.

Throughout the decisions the Court used or referred to phrases like "comparatively minor evening part-time job," "sideline," "optional part-time work," "primary, principal, or full-time employment" and "regular full-time employment." At no point did the Court, or other states' courts mentioned in the decision, refer to this being a substitute for short-term or a trial period of employment, or as a mechanism to determine suitability of work. An allowance of benefits after quitting short-term, full-time employment would seem to encourage a claimant to use it as a one-sided, no-penalty trial period of employment. 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." In fact, 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. Taylor argued disqualification would be unfair because he went the extra mile in searching for gainful employment. The Court specifically declined to carve out a

judicial exception to the existing statute to give special protection to persons who were drawing UI benefits prior to accepting inappropriate employment and left that to the legislature, which has declined to amend the statute.

I have other brief arguments based upon current rules but have limited the discussion to case law. If you wish to have further analysis based upon Department rules, please advise.

DML

Dévon

Message: RE: Welch, McCarthy - PT Quit Memo**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: 40860919
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Welch, McCarthy - PT Quit Memo**

From Wahlert, Teresa [IWD] **Date** Wednesday, May 29, 2013 10:03 AM
To Lewis, Devon [IWD]
Cc

[How long has the "policy" for PT quit been in place?](#)

From: Lewis, Devon [IWD]
Sent: Wednesday, May 29, 2013 12:07 AM
To: Wahlert, Teresa [IWD]
Subject: Welch, McCarthy - PT Quit Memo

MEMO

To: IWD Director Teresa Wahlert
 From: Dévon M. Lewis, ALJ II
 Date: May 28, 2013
 Re: Welch and McCarthy cases – Part-time quit issue

McCarthy v. Iowa Emp't Sec. Comm'n, 247 Iowa 760, 76 N.W.2d 201 (1956). McCarthy worked full-time for a produce company and worked an "extra, part-time job" for a bowling alley for a "limited" period (7 or 8 weeks) and quit because "he found combined jobs too heavy." Shortly thereafter and before requalification, the produce company laid him off. The Court held that disqualification should not apply to the *concurrent* part-time separation because the part-time work did not create the unemployment. It directed the commission to develop rules adopt rules to address charges or relief therefrom to full- and part-time employers.

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The Court declined to make a distinction between a first and second benefit year entitlement. It relied heavily on the *McCarthy* rationale and said a total separation disqualification applies to the "primary" or "regular" employment that caused the original unemployment and relieving that employer would give it an "undue benefit." It identified policy considerations to resolve the issue and held that the statute allows for a monetary incentive for unemployed workers to supplement their benefits by seeking "supplemental part-time work" and disqualification would serve as punishment. The identified legislative intent was to provide claimants an incentive to supplement their benefits with part-time work while allowing them to seek and remain available for regular full-time work and noted this allows an employee to end up with more income than if he did not work while not fearing risk of total benefit loss if quitting part-time work.

It observed the separation from Oscar Mayer continued throughout the claim and his separation from part-time work with Minburn "changed his status from partially unemployed to totally unemployed, not from employed to unemployed." The partial UI benefits reduced the charges to Oscar Mayer but did not remove the fact of the initial cause of unemployment. Because the part-time wage credits are removed from the base period until requalification, the part-time employer is not penalized.

Throughout the decisions the Court used or referred to phrases like "comparatively minor evening part-time job," "sideline," "optional part-time work," "primary, principal, or full-time employment" and "regular full-time employment." At no point did the Court, or other states' courts mentioned in the decision, refer to this being a substitute for short-term or a trial period of employment, or as a mechanism to determine suitability of work. An allowance of benefits after quitting short-term, full-time employment would seem to encourage a claimant to use it as a one-sided, no-penalty trial period of employment. 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." In fact, 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. Taylor argued disqualification would be unfair because he went the extra mile in searching for gainful employment. The Court specifically declined to carve out a

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DML

Dévon

Message: RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:15 PM
 Item ID: 40861449
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

From Wise, Steve [IWD]

Date
 Thursday,
 August 22, 2013
 11:25 AM

To Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]

Cc Alexander, Marty [IWD]; Baughman, Myra [IWD]; Benson, Joni [IWD]; Oatts, Sandra [IWD]; Scott, Cheryl [IWD]; Shroyer, Paula [IWD]; Ziegler, Vanessa [IWD]; Anderson, Donnell [IWD]; Wilkinson, Michael [IWD]

 [PROCEDURES FOR HANDLING § 96.3-7-b CASES.pdf](#) (87 Kb HTML)

There was an error in the citation for the rule section that defines participation for the purpose of deciding if a claimant has to repay an overpayment, which should be 871 IAC 24.10. I apologize for not checking the citation before I finalized this document yesterday. This version corrects the error.

Here is the full process flow (and attached) that Appeals in consultation with the UI Division has come up with. It includes information on intake, what the UI Division will be doing, and the types of appeals we will be handling, and what will be decided based on the type of case. I am sending this to everyone in Appeals but it mainly affects ALJs and

people doing intake. Let me know if you have any questions.

For those who don't know, there was a new law that went into effect July 1, that charges employer in certain cases for overpayments caused by the employer failing to participate in the fact-finding interview.

PROCEDURES FOR HANDLING § 96.3-7-b CASES

During the fact-finding interview, the fact finder will make a determination on whether the employer participated in the fact-finding interview or not. This will be noted on Notice of UI Fact-finding Interview page (SIR). A check box will be created for this along with one that designates the employer as a base-period employer. UI Division will share a copy of the revised Notice so we can readily pick this out.

For an **Employer Appeal** of a **Decision Granting Benefits** to the claimant in a **Separation Case**.

1. If the **Separation Decision** that comes before the ALJ was issued **July 2, 2013, or later** the process the ALJ will follow depends on whether the employer was a **Base-Period Employer or not**.
2. If the employer was a **Base Period Employer**.
 - a. The issue will be the separation issues of discharge and quit and "Whether the claimant was overpaid" and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** "Should benefits be repaid by claimant or charged to the employer due to employer's participation in the fact finding? Law § 96.3-7 & 871 IAC 24.10.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
 - d. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits and (3) the employer is not relieved of benefit charges because the employer failed to participate. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code in this manner.
 - ii. If the claimant and employer agree that the employer participated in

the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code and automatically set up the overpayment.

iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant or charged to the employer due to employer's participation in the fact finding. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the employer will be charged and if the overpayment will be waived.

iv. The definition of participation can be found at 871 IAC 24.10.

3. If the employer was a **Non-Base Period Employer**.

- a. Charges to the employer are not involved in these type of cases where there is an overpayment.
- b. The issue will be as now the separation issues of discharge and quit and "Whether the claimant was overpaid and Normal Law §§, 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** Should benefits be repaid by claimant due to employer's participation in the fact finding? Law § 96.3-7 and 871 IAC 24.10.
- c. Administrative file does not have to be sent out unless requested by a party.
- d. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
- e. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits.
 - ii. If the claimant and employer agree that the employer participated in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the

claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated.

iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the overpayment will be waived.

4. If the **Separation Decision** was issued **July 1, 2013, or before** there is no change in what is being done.
 - a. The issue will be as now the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. These cases **do not** involve the issue of whether the employer is to be charged for the overpayment.
 - d. ALJ can remand as before on the issue of amount of the overpayment and whether repayment of the overpayment is required.

- [Image 1](#)
 - [Image 2](#)
 - [Image 3](#)
-

Image 1

PROCEDURES FOR HANDLING § 96.3-7-b CASES

During the fact-finding interview, the fact finder will make a determination on whether the employer participated in the fact-finding interview or not. This will be noted on Notice of UI Fact-finding Interview page (SIR). A check box will be created for this along with one that designates the employer as a base-period employer. UI Division will share a copy of the revised Notice so we can readily pick this out.

For an **Employer Appeal** of a **Decision Granting Benefits** to the claimant in a **Separation Case**.

1. If the **Separation Decision** that comes before the ALJ was issued **July 2, 2013, or later** the process the ALJ will follow depends on whether the employer was a **Base-Period Employer or not**.

2. If the employer was a **Base Period Employer**.

a. The issue will be the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** “Should benefits be repaid by claimant or charged to the employer due to

employer’s participation in the fact finding? Law § 96.3-7 & 871 IAC 24.10.

b. Administrative file does not have to be sent out unless requested by a party.

c. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC

for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on

the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.

d. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and

ERIC for the decision in question for employer participation and ask the parties about participation.

i. If the employer agrees that the employer did not participate in the factfinding interview and ALJ reverses the decision granting benefits creating

an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits and (3) the employer is not relieved of benefit charges because the employer failed to participate. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code in this manner.

ii. If the claimant and employer agree that the employer participated in the

fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated. An IT request is in process and

Image 2

should be ready by October 1 that will allow the ALJ to lock the claim with a special code and automatically set up the overpayment.

iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the

issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant or charged to the employer due to employer's participation in the fact finding. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the employer will be charged and if the

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a. Charges to the employer are not involved in these type of cases where there is an overpayment.

b. The issue will be as now the separation issues of discharge and quit and

“Whether the claimant was overpaid and Normal Law §§, 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** Should benefits be repaid by claimant due to employer’s participation in the fact finding? Law § 96.3-7 and 871 IAC 24.10.

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i. If the employer agrees that the employer did not participate in the factfinding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits.

ii. If the claimant and employer agree that the employer participated in the

fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated.

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Image 3

issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the overpayment will be waived.

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whether repayment of the overpayment is required.

Message: RE: 41, 41A and 41B**Case Information:**

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:14 PM
Item ID: 40861437
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: 41, 41A and 41B

From Wise, Steve [IWD] **Date** Wednesday, August 21, 2013 2:03 PM
To Shroyer, Paula [IWD]; Scott, Cheryll [IWD]
Cc Hillary, Teresa [IWD]; Lewis, Devon [IWD]

Looks fine to me.

From: Shroyer, Paula [IWD]
Sent: Wednesday, August 21, 2013 1:29 PM
To: Wise, Steve [IWD]; Scott, Cheryll [IWD]
Cc: Hillary, Teresa [IWD]; Lewis, Devon [IWD]
Subject: RE: 41, 41A and 41B

Sorry..I just wanted to be sure we were on same page...so here is what I have saved as 41 ref..... thanks!

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.
 - a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
 - b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 12:58 PM
To: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]
Cc: Hillary, Teresa [IWD]; Lewis, Devon [IWD]
Subject: RE: 41, 41A and 41B

Please revise Reference 41 as requested. We will take care of instructing ALJs on using the correct reference codes for overpayment cases.

From: Shroyer, Paula [IWD]
Sent: Wednesday, August 21, 2013 12:20 PM
To: Wise, Steve [IWD]
Subject: RE: 41, 41A and 41B

So Steve, this is 41 ref ?? NOT 41a? and some aljs never knew there was a 41a – always used 41 ..I am sure some of them are confused and I know Cheryll & I are..

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 12:17 PM
To: Donner, Lynette [IWD]; Hendricksmeier, Bonny [IWD]; Ackerman, Susan [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]
Cc: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]
Subject: RE: 41, 41A and 41B

Susan had sent out a revised Reference 41 to deal with non-separation overpayments. Everyone on the original email was sent to agreed that it makes sense. We have a consensus then that Reference 41 should be revised and used with non-separation overpayments. Word Processing should make the revision. I have more stuff coming on separation overpayments soon, just not enough time between hearings to get it out.

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b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

From: Donner, Lynette [IWD]
Sent: Wednesday, August 21, 2013 11:29 AM
To: Hendricksmeier, Bonny [IWD]; Ackerman, Susan [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]
Cc: UI
Subject: RE: 41, 41A and 41B

That would be the proposed revised 41 as distributed by Susan.

From: Hendricksmeier, Bonny [IWD]

Sent: Wednesday, August 21, 2013 11:24 AM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: UI

Subject: 41, 41A and 41B

I'm getting really confused now.

I understand 41B is to be used when the ALJ reverses an allowance of benefits from the FF. That is when the issue of whether the ER participated is relevant.

Which reference code do we use when the overpayment decision is the result of a FF on issues such as A&A, Work Refusal or some other non-separation case?

Message: RE: 41, 41A and 41B**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861430
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: 41, 41A and 41B**

From Wise, Steve [IWD]

Date
 Wednesday,
 August 21, 2013
 12:17 PM

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b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

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James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

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Message: RE: 41, 41A and 41B**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861431
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: 41, 41A and 41B

From Wise, Steve [IWD] **Date** Wednesday, August 21, 2013 12:58 PM
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Cc: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]
Subject: RE: 41, 41A and 41B

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Message: PROCEDURES FOR HANDLING § 96.3-7-b CASES**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861432
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ **PROCEDURES FOR HANDLING § 96.3-7-b CASES**

From Wise, Steve [IWD] **Date** Wednesday, August 21, 2013 1:06 PM
To Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Cc

Devon and Tere. So I think this should be sent out to ALJs, WP, and Support Staff. Agree?

Here is the full process flow (and attached) that Appeals in consultation with the UI Division has come up with. It includes information on intake, what the UI Division will be doing, and types of appeals we will be handling, and what will be decided based on the type of case. Let me know if you have any questions.

PROCEDURES FOR HANDLING § 96.3-7-b CASES

During the fact-finding interview, fact finder will make a determination on whether the employer participated in the fact-finding interview or not. This will be noted on Notice of UI Fact-finding Interview page (SIR). A check box will be created for this along with one that designates the employer as a base-period employer. UI Division will share a copy of the revised Notice so we can readily pick this out.

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 - b. Administrative file does not have to be sent out unless requested by a party.
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- information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
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iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant. The claims Deputy at the UIISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the overpayment will be waived.

4. If the **Separation Decision** was issued **July 1, 2013, or before** there is no change in what is being done.
- a. The issue will be as now the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. These cases **do not** involve the issue of whether the employer is to be charged for the overpayment.
 - d. ALJ can remand as before on the issue of amount of the overpayment and whether repayment of the overpayment is required.

Message: PROCEDURES FOR HANDLING § 96.3-7-b CASES

Case Information:

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861436
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **PROCEDURES FOR HANDLING § 96.3-7-b CASES**

From Wise, Steve [IWD] **Date**
Wednesday,
August 21, 2013
1:49 PM

To Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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 Alexander, Marty [IWD]; Baughman, Myra [IWD]; Benson, Joni [IWD]; Oatts, Sandra [IWD]; Scott, Cheryl [IWD]; Shroyer, Paula [IWD]; Ziegler, Vanessa [IWD]; Anderson, Donnell [IWD]; Wilkinson, Michael [IWD]

 [PROCEDURES FOR HANDLING § 96.3-7-b CASES.pdf](#) (86 Kb HTML)

Here is the full process flow (and attached) that Appeals in consultation with the UI Division has come up with. It includes information on intake, what the UI Division will be doing, and the types of appeals we will be handling, and what will be decided based on the type of case. I am sending this to everyone in Appeals but it mainly affects ALJs and people doing intake. Let me know if you have any questions.

For those who don't know, there was a new law that went into effect July 1, that charges employer in certain cases for overpayments caused by the employer failing to participate in the fact-finding interview.

PROCEDURES FOR HANDLING § 96.3-7-b CASES

During the fact-finding interview, the fact finder will make a determination on whether the employer participated in the fact-finding interview or not. This will be noted on Notice of UI Fact-finding Interview page (SIR). A check box will be created for this along with one that designates the employer as a base-period employer. UI Division will share a copy of the revised Notice so we can readily pick this out.

For an **Employer Appeal** of a **Decision Granting Benefits** to the claimant in a **Separation Case**.

1. If the **Separation Decision** that comes before the ALJ was issued **July 2, 2013, or later** the process

the ALJ will follow depends on whether the employer was a **Base-Period Employer or not**.

2. If the employer was a **Base Period Employer**.

- a. The issue will be the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** “Should benefits be repaid by claimant or charged to the employer due to employer’s participation in the fact finding? Law § 96.3-7 & 871 IAC 24.50-7.
- b. Administrative file does not have to be sent out unless requested by a party.
- c. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
- d. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits and (3) the employer is not relieved of benefit charges because the employer failed to participate. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code in this manner.
 - ii. If the claimant and employer agree that the employer participated in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code and automatically set up the overpayment.
 - iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant or charged to the employer due to employer’s participation in the fact finding. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the employer will be charged and if the overpayment will be waived.

3. If the employer was a **Non-Base Period Employer**.

- a. Charges to the employer are not involved in these type of cases where there is an overpayment.
- b. The issue will be as now the separation issues of discharge and quit and “Whether the claimant was overpaid and Normal Law §§, 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** Should benefits be repaid by claimant due to employer’s participation in the fact finding? Law § 96.3-7 and 871 IAC 24.50-7.
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 - b. Administrative file does not have to be sent out unless requested by a party.
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- [Image 1](#)
 - [Image 2](#)
 - [Image 3](#)
-

Image 1

PROCEDURES FOR HANDLING § 96.3-7-b CASES

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1. If the **Separation Decision** that comes before the ALJ was issued **July 2, 2013, or later** the process the ALJ will follow depends on whether the employer was a **Base-Period Employer or not**.

2. If the employer was a **Base Period Employer**.

a. The issue will be the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** “Should benefits be repaid by claimant or charged to the employer due to

employer’s participation in the fact finding? Law § 96.3-7 & 871 IAC 24.50-7.

b. Administrative file does not have to be sent out unless requested by a party.

c. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC

for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.

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ERIC for the decision in question for employer participation and ask the parties about participation.

i. If the employer agrees that the employer did not participate in the factfinding interview and ALJ reverses the decision granting benefits creating

an overpayment—ALJ issues decision that (1) the claimant was overpaid

benefits but (2) the claimant is not required to repay those benefits and (3) the employer is not relieved of benefit charges because the employer failed to participate. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code in this manner.

ii. If the claimant and employer agree that the employer participated in the

fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated. An IT request is in process and

Image 2

should be ready by October 1 that will allow the ALJ to lock the claim with a special code and automatically set up the overpayment.

iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the

issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant or charged to the employer due to employer's participation in the fact finding. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the employer will be charged and if the overpayment will be waived.

3. If the employer was a **Non-Base Period Employer**.

a. Charges to the employer are not involved in these type of cases where there is an overpayment.

b. The issue will be as now the separation issues of discharge and quit and

“Whether the claimant was overpaid and Normal Law §§, 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** Should benefits be repaid by claimant due to employer's participation in the fact finding? Law § 96.3-7 and 871 IAC 24.50-7.

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i. If the employer agrees that the employer did not participate in the factfinding interview and ALJ reverses the decision granting benefits creating

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iii. If the claimant and employer do not agree that the employer participated

in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ

Image 3

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Message: RE: PROCESS FOR HANDLING § 96.3-7-b CASES**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861422
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: PROCESS FOR HANDLING § 96.3-7-b CASES**

From Lewis, Devon [IWD] **Date** Wednesday, August 21, 2013 8:30 AM
To Wise, Steve [IWD]
Cc

Suggested changes highlighted.
 Issued July 2 or later?
 Remove 'Keep in mind that'

Excellent explanation and outline, Steve! Thank you

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 7:49 AM
To: Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]
Subject: PROCESS FOR HANDLING § 96.3-7-b CASES

Below and attached is the process I understand was agreed to. I want to get this out to ALJs ASAP because I had cases yesterday where the issue of participation in the hearing had been added and the fact-finding information was sent to the parties. I know others have had cases like this as well because I got questions on this yesterday. I have also attached some proposed language Appeals will use in cases where the participation issue is addressed. Let me know if you have questions.

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 AND PROCESS FOR HANDLING § 96.3-7-b CASES**

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3. If the employer was a **Non-Base Period Employer**.
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Message: RE: PROCESS FOR HANDLING § 96.3-7-b CASES**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861424
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: PROCESS FOR HANDLING § 96.3-7-b CASES

From Lewis, Devon [IWD] **Date** Wednesday, August 21, 2013
 9:24 AM
To Wise, Steve [IWD]; Hillary,
 Teresa [IWD]
Cc

Agreed

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 9:15 AM
To: Hillary, Teresa [IWD]
Cc: Lewis, Devon [IWD]
Subject: RE: PROCESS FOR HANDLING § 96.3-7-b CASES

My opinion is if the participation issue was listed on the hearing notice and the party fails to participate in the appeal hearing, they have lost their opportunity to argue about whether the employer did or did not participate. Again, if the employer participation issue is unclear from looking at the fact-finding, I am going to remand.

From: Hillary, Teresa [IWD]
Sent: Wednesday, August 21, 2013 8:37 AM
To: Wise, Steve [IWD]
Cc: Lewis, Devon [IWD]
Subject: RE: PROCESS FOR HANDLING § 96.3-7-b CASES

I think it looks good. I too had my first OP case with the new issues on it yesterday. My cl did not participate in the hearing. My facts were the classic and #2 on your example. I have the ff notes and am going to make a decn re: participation since it is clear to me. When one party does not participate

in our hearing, I am not automatically considering that 'disagreement' on the participation issue. I want to make sure I'm on the right page with the policy. So I'm reversing the separation case, requiring repayment by the claimant and relieving the Er of charges.

Let me know if I'm wrong,

Teresa K. Hillary

Iowa Workforce Development
1000 E Grand Avenue
Des Moines IA 50319

Phone: 515.725.2683

FAX: 515.242.5144

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 7:49 AM
To: Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Wilkinson, Michael [IWD]; Eklund, David [IWD]
Subject: PROCESS FOR HANDLING § 96.3-7-b CASES

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Plus: "Should benefits be repaid by claimant or charged to the employer

- due to employer's participation in the fact finding? Law § 96.3-7 & 871 IAC 24.50-7.
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Message: RE: Can we amend ref code 41 to be as follows?

Case Information:

Message Type: Exchange
Message Direction: Internal
Case: IWD Senator Petersen Request - Version 3
Capture Date: 7/10/2014 1:32:14 PM
Item ID: 40861428
Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: Can we amend ref code 41 to be as follows?**

From	Hillary, Teresa [IWD]	Date Wednesday, August 21, 2013 10:48 AM
To	Lewis, Devon [IWD]; Ackerman, Susan [IWD]; Scott, Cheryll [IWD]; Shroyer, Paula [IWD]; Wise, Steve [IWD]	
Cc	Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]	

I think so too. I would suggest checking with Cheryll and Paula to make sure none of the ALJs do use that section. If not, then lets change it.

Thanks much

Teresa K. Hillary

Iowa Workforce Development
1000 E Grand Avenue
Des Moines IA 50319

Phone: 515.725.2683
FAX: 515.242.5144

From: Lewis, Devon [IWD]
Sent: Wednesday, August 21, 2013 10:47 AM
To: Ackerman, Susan [IWD]; Scott, Cheryl [IWD]; Shroyer, Paula [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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]
Subject: RE: Can we amend ref code 41 to be as follows?

Good suggestion, Susan. Steve, Teresa, and Deb, your thoughts?

From: Ackerman, Susan [IWD]
Sent: Wednesday, August 21, 2013 10:40 AM
To: Scott, Cheryl [IWD]; Shroyer, Paula [IWD]; Wise, Steve [IWD]
Cc: Donner, Lynette [IWD]; Elder, Julie [IWD]; Hendricksmeier, 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: Can we amend ref code 41 to be as follows?

It's my understanding we don't use ref code 41 anymore? Could we change it to reflect the following so that we could use this for reversals of non-separation cases.....

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

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

Message: RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861435
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

✉ RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

From Hillary, Teresa [IWD] **Date** Wednesday, August 21, 2013
 1:21 PM
To Lewis, Devon [IWD]; Wise, Steve
 [IWD]
Cc

Agree. GREAT JOB Steve.

From: Lewis, Devon [IWD]
Sent: Wednesday, August 21, 2013 1:20 PM
To: Wise, Steve [IWD]; Hillary, Teresa [IWD]
Subject: RE: PROCEDURES FOR HANDLING § 96.3-7-b CASES

Yes – thanks!

From: Wise, Steve [IWD]
Sent: Wednesday, August 21, 2013 1:04 PM
To: Lewis, Devon [IWD]; Hillary, Teresa [IWD]
Subject: PROCEDURES FOR HANDLING § 96.3-7-b CASES

Devon and Tere. So I think this should be sent out to ALJs, WP, and Support Staff.
 Agree?

Here is the full process flow (and attached) that Appeals in consultation with the UI Division has come up with. It includes information on intake, what the UI Division will be doing, and types of appeals we will be handling, and what will be decided based on the type of case. Let me know if you have any questions.

PROCEDURES FOR HANDLING § 96.3-7-b CASES

During the fact-finding interview, fact finder will make a determination on whether the employer participated in the fact-finding interview or not. This will be noted on Notice of UI Fact-finding Interview page (SIR). A check box will be created for this along with one that designates the employer as a base-period employer. UI Division will share a copy of the revised Notice so we can readily pick this out.

For an **Employer Appeal** of a **Decision Granting Benefits** to the claimant in a **Separation Case**.

1. If the **Separation Decision** that comes before the ALJ was issued **July 2, 2013, or later** the process the ALJ will follow depends on whether the employer was a **Base-Period Employer or not**.
2. If the employer was a **Base Period Employer**.
 - a. The issue will be the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** “Should benefits be repaid by claimant or charged to the employer due to employer’s participation in the fact finding? Law § 96.3-7 & 871 IAC 24.50-7.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
 - d. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits and (3) the employer is not relieved of benefit charges because the employer failed to participate. An IT request is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code in this manner.
 - ii. If the claimant and employer agree that the employer participated in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated. An IT request

is in process and should be ready by October 1 that will allow the ALJ to lock the claim with a special code and automatically set up the overpayment.

- iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant or charged to the employer due to employer's participation in the fact finding. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the employer will be charged and if the overpayment will be waived.

3. If the employer was a **Non-Base Period Employer**.

- a. Charges to the employer are not involved in these type of cases where there is an overpayment.
- b. The issue will be as now the separation issues of discharge and quit and “Whether the claimant was overpaid and Normal Law §§, 96.5-2-a, 96.5-1, & 96.3-7. **Plus:** Should benefits be repaid by claimant due to employer's participation in the fact finding? Law § 96.3-7 and 871 IAC 24.50-7.
- c. Administrative file does not have to be sent out unless requested by a party.
- d. During intake, the first page of the Notice of UI Fact-finding Interview on ERIC for the reference number being appealed should be printed out for the ALJ since it has information about whether the employer is a base-period employer and who participated in the hearing. The UISC Management will add a check box on the Special Investigation Report (SIR) to indicate if the employer met the measure of participation or if it is not applicable. Fact findings conducted on or before 9-23-13 will not have the check box, however the SIR will have documentation on the cover sheet regarding the participation of both parties and the attempts made by staff to include both parties.
- e. During the hearing, the ALJ will check the Notice of UI Fact-finding Interview and ERIC for the decision in question for employer participation and ask the parties about participation.
 - i. If the employer agrees that the employer did not participate in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits but (2) the claimant is not required to repay those benefits.
 - ii. If the claimant and employer agree that the employer participated in the fact-finding interview and ALJ reverses the decision granting benefits creating an overpayment—ALJ issues decision that (1) the claimant was overpaid benefits and (2) the claimant is required to repay the benefits because the employer participated.
 - iii. If the claimant and employer do not agree that the employer participated in the fact-finding interview and there is no proper way to resolve the issue without sending out the fact-finding documents

to the parties—ALJ issues decision (1) that the claimant was denied and overpaid benefits and (2) remanding the issue of whether the employer participated and whether benefits should be repaid by claimant. The claims Deputy at the UISC will review the Fact Finding Record and issue an appealable decision to both parties regarding the employers participation and if the overpayment will be waived.

4. If the **Separation Decision** was issued **July 1, 2013, or before** there is no change in what is being done.
 - a. The issue will be as now the separation issues of discharge and quit and “Whether the claimant was overpaid” and Normal Law §§ 96.5-2-a, 96.5-1, & 96.3-7.
 - b. Administrative file does not have to be sent out unless requested by a party.
 - c. These cases **do not** involve the issue of whether the employer is to be charged for the overpayment.
 - d. ALJ can remand as before on the issue of amount of the overpayment and whether repayment of the overpayment is required.

Message: RE: 41, 41A and 41B**Case Information:**

Message Type: Exchange
 Message Direction: Internal
 Case: IWD Senator Petersen Request - Version 3
 Capture Date: 7/10/2014 1:32:14 PM
 Item ID: 40861438
 Policy Action: Not Specified

Mark History:

No reviewing has been done

Policies:

No Policies attached

 **RE: 41, 41A and 41B**

From Hillary, Teresa [IWD]

Date Wednesday, August 21, 2013 2:03 PM

To Lewis, Devon [IWD]; Wise, Steve [IWD];
Shroyer, Paula [IWD]; Scott, Cheryll [IWD]

Cc

Me three 😊

From: Lewis, Devon [IWD]

Sent: Wednesday, August 21, 2013 2:03 PM

To: Wise, Steve [IWD]; Shroyer, Paula [IWD]; Scott, Cheryll [IWD]

Cc: Hillary, Teresa [IWD]

Subject: RE: 41, 41A and 41B

Me too

From: Wise, Steve [IWD]

Sent: Wednesday, August 21, 2013 2:03 PM

To: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]

Cc: Hillary, Teresa [IWD]; Lewis, Devon [IWD]

Subject: RE: 41, 41A and 41B

Looks fine to me.

From: Shroyer, Paula [IWD]

Sent: Wednesday, August 21, 2013 1:29 PM

To: Wise, Steve [IWD]; Scott, Cheryll [IWD]

Cc: Hillary, Teresa [IWD]; Lewis, Devon [IWD]

Subject: RE: 41, 41A and 41B

Sorry..I just wanted to be sure we were on same page...so here is what I have saved as 41 ref....
thanks!

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

From: Wise, Steve [IWD]

Sent: Wednesday, August 21, 2013 12:58 PM

To: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]

Cc: Hillary, Teresa [IWD]; Lewis, Devon [IWD]

Subject: RE: 41, 41A and 41B

Please revise Reference 41 as requested. We will take care of instructing ALJs on using the correct reference codes for overpayment cases.

From: Shroyer, Paula [IWD]

Sent: Wednesday, August 21, 2013 12:20 PM

To: Wise, Steve [IWD]

Subject: RE: 41, 41A and 41B

So Steve, this is 41 ref ?? NOT 41a? and some aljs never knew there was a 41a – always used 41 ..I am sure some of them are confused and I know Cheryll & I are..

From: Wise, Steve [IWD]

Sent: Wednesday, August 21, 2013 12:17 PM

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

Cc: Shroyer, Paula [IWD]; Scott, Cheryll [IWD]

Subject: RE: 41, 41A and 41B

Susan had sent out a revised Reference 41 to deal with non-separation overpayments. Everyone on the original email was sent to agreed that it makes sense. We have a consensus then that Reference 41 should be revised and used with non-separation overpayments. Word Processing should make the revision. I have more stuff coming on separation overpayments soon, just not enough time between hearings to get it out.

Iowa Code § 96.3-7 provides in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. . . .

From: Donner, Lynette [IWD]

Sent: Wednesday, August 21, 2013 11:29 AM

To: Hendricksmeier, Bonny [IWD]; Ackerman, Susan [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: UI

Subject: RE: 41, 41A and 41B

That would be the proposed revised 41 as distributed by Susan.

From: Hendricksmeier, Bonny [IWD]

Sent: Wednesday, August 21, 2013 11:24 AM

To: Ackerman, Susan [IWD]; Donner, Lynette [IWD]; Elder, Julie [IWD]; Hillary, Teresa [IWD]; Lewis, Devon [IWD]; Mormann, Marlon [IWD]; Nice, Terence [IWD]; Scheetz, Beth [IWD]; Stephenson, Randall [IWD]; Timberland, James [IWD]; Wise, Debra [IWD]; Wise, Steve [IWD]

Cc: UI

Subject: 41, 41A and 41B

I'm getting really confused now.

I understand 41B is to be used when the ALJ reverses an allowance of benefits from the FF. That is when the issue of whether the ER participated is relevant.

Which reference code do we use when the overpayment decision is the result of a FF on issues such as A&A, Work Refusal or some other non-separation case?