

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER M KARLE
Claimant

HY-VEE INC
Employer

APPEAL NO. 24A-UI-02325-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/07/24
Claimant: Respondent (2R)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.1A(37)(b) – Partial Unemployment
Iowa Code Section 96.7(2)(a)(2) – Employer Liability

STATEMENT OF THE CASE:

On February 27, 2024, the employer filed a timely appeal from the February 19, 2024 (reference 02) decision that allowed benefits to the claimant effective January 7, 2024, and that held the employer's account could be charged for benefits, based on deputy's conclusion the claimant was able to work and available work but that the employer was not providing the same employment as in the base period. After due notice was issued, a hearing was held on March 25, 2024. Jennifer Karle (claimant) participated. Kelly Ray of Corporate Cost Control represented the employer and presented testimony through Traci McKoon. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and WAGE-A. Employer Exhibits 1 through 5 were not received into evidence because they were not properly served on the claimant prior to the hearing date.

ISSUES:

Whether the claimant may be considered for benefits for the period of January 7, 2024 through January 20, 2024 in the absence of weekly claims.

Whether the claimant was able to work and available for work during the period of January 21, 2024 through March 2, 2024.

Whether the claimant was partially unemployed during the period of January 21, 2024 through March 2, 2024.

Whether the employer's account may be charged for benefits for the period of January 7, 2024 through March 2, 2024.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jennifer Karle (claimant) established an original claim for benefits that was effective January 7, 2024. Iowa Workforce Development set the weekly benefit at \$218.00. Hy-Vee, Inc. is the sole base period employer.

The claimant established the claim for benefits in response to being discharged on January 10, 2024 from a brief full-time employment with Great River Medical Center. IWD Benefits Bureau determined that the discharge was non-disqualifying. See the February 13, 2024 (reference 01) decision.

After the claimant established her original claim for benefits, she did not immediately commence making weekly claims. The claimant reopened the claim for benefits effective January 21, 2024 and thereafter made weekly claims for each of the six weeks between January 21, 2024 and March 2, 2024. During each of the claim weeks, the claimant applied for four or more jobs in an attempt to replace the full-time employment with Great River Medical Center. The claimant discontinued her claim for benefits in connection with beginning a new employment with at Hope Haven that started on March 5, 2024.

The claimant has at all relevant times been employed by Hy-Vee, Inc. as a part-time bakery clerk. Until May 2023, the claimant generally worked just Saturday and Sunday shifts. The shifts averaged 4 hours per shift. In May 2023, the claimant completed training for a Medical Coding Certificate. The claimant thereafter worked an average of 20 hours a week at Hy-Vee. The hours were spread over five four-hour shifts each week.

In November 2023, the claimant notified HyVee that she had accepted full-time employment with Great River Medical Center. The claimant voluntarily reduced her available hours for the part-time employment at Hy-Vee to Saturdays and Sundays. The claimant continued to work the weekend shifts at Hy-Vee during her brief full-time employment with Great River Medical Center. When the claimant reduced her availability with Hy-Vee to weekends, HyVee filled the claimant's non-weekend shifts with a different employee.

After the discharge from the full-time employment with Great River, the claimant continued to work her weekend Hy-Vee shifts and picked up additional shifts when they were available. During the period when the claim was active, the claimant requested to be off work on four days: February 3, 5, 6 and 15, 2024. Only February 3 was a weekend date. The other three dates were not part of the claimant's usual weekend workdays. The claimant otherwise performed all the work HyVee had available for her. Since December 25, 2023, the claimant's hourly wage has been \$13.45 before then, the hourly wage was \$13.30.

The claimant's hours worked during the time when the unemployment insurance claim was active were as follows:

<u>Date Worked</u>	<u>Hours Worked</u>	<u>Weekly Total</u>	<u>Weekly Wages</u>	<u>Reported by Claimant</u>
1/21/24	6.12			
1/25/24	6.27			
1/27/24	4.32	16.71	224.75	225.00
1/28/24	4.82			
1/29/24	4.85	9.67	130.06	130.00
2/4/24	6.4			
2/7/24	6.53			
2/10/24	4.42	17.35	233.36	233.00
2/11/24	5.38			
2/12/24	5.25			
2/16/24	5.4	16.03	215.60	216.00
2/18/24	4.05			
2/23/24	4.73			
2/24/24	5.85	14.63	196.77	197.00
2/25/24	4.52			
2/26/24	4.18			
3/1/24	6.47			
3/2/24	5.63	20.80	279.76	219.00

The claimant's base period for purposes of the claim that was effective January 7, 2024 consists of the fourth quarter of 2022 and the first, second and third quarters of 2023. Because Hy-Vee is the sole base period employer, Hy-Vee is the only employer whose account is at risk of being charged for benefits paid to the claimant. Throughout the fourth quarter of 2022 and the first quarter of 2023, the claimant generally worked weekends at Hy-Vee. In May 2023, midway through the second quarter of 2023, the claimant expanded her availability for work with HyVee to the 20-hour per week average. The claimant continued to work for HyVee at this level through the third quarter of 2023. Thus, for the majority of the base period, the established conditions of the employment included employment generally limited to weekends. But for roughly the last four months of the base period, the established conditions of the employment included the 20-hour a week average. However, the claimant initiated a change in conditions of employment in late 2023, when she commenced her new full-time employment. With that change, the new established conditions of the HyVee employment reverted to the weekend shifts.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

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

3. a. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3, are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2) provides:

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

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Code section 96.1A(37)(b) provides:

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

If a claimant to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

While the weight of the evidence establishes that the claimant was able to work and available throughout the period of January 21, 2024 through March 2, 2024, the claimant cannot be deemed partially unemployed during that period. Throughout that period, the sole base period employer, Hy-Vee, continued to provide the same employment as existed through the majority of the base period. The employment HyVee continued to provide was consistent with the conditions of employment the claimant initiated in late fall 2023. Because Hy-Vee is the sole base period employer, the determination that the claimant is not partially unemployed from HyVee means that the claimant is not eligible for benefits for the period of January 21, 2024 through March 2, 2024.

Iowa Administrative Code rule 87124.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

Because the claimant did not file weekly claims for the weeks between January 7, 2024 and January 20, 2024, the claimant cannot be considered for benefits for those weeks and the administrative law judge need not further consider the able and available or partial unemployment issues for those weeks.

DECISION:

The February 19, 2024 (reference 02) decision is REVERSED.

The claimant was able to work and available throughout the period of January 21, 2024 through March 2, 2024. However, the claimant cannot be deemed partially unemployed during that period. The claimant is not eligible for benefits for the period of January 21, 2024 through March 2, 2024.

Because the claimant did not file weekly claims for the weeks between January 7, 2024 and January 20, 2024, the claimant cannot be considered for benefits for those weeks and the administrative law judge need not further consider the able and available or partial unemployment issues for those weeks.

The employer's account shall not be charged for benefits for the period of January 7, 2024 through March 2, 2024.

REMAND:

This matter is REMANDED to IWD Benefits Bureau for entry of an overpayment decision regarding the \$373.00 in benefits the claimant received for five of the six weeks between January 21, 2024 and March 2, 2024.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

April 1, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.