

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARCOS ZAVALA LEON
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-06822-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/10/21
Claimant: Appellant (4)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

STATEMENT OF THE CASE:

On March 5, 2021, Marcos Zavala Leon (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 1, 2021 (reference 01) that denied benefits as of January 10, 2021 based on a finding claimant was unable to perform work due to illness.

A telephone hearing was held on May 14, 2021. The parties were properly notified of the hearing. Claimant participated personally. Hy-Vee Inc. (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant began working for employer in June 2011. Claimant is still employed by employer full-time as a department manager. Employer held claimant out of work based on its COVID-19 protocols from January 7 through 21 and February 8 through 21, 2021. Claimant was not ill and was able and available for work during those periods. Claimant was employed as usual between these periods.

Claimant filed a weekly claim for benefits each week from the benefit week ending January 16, 2021 through the benefit week ending February 20, 2021. Claimant reported no wages in the weeks ending January 16, February 13, and February 20, 2021. Claimant reported wages in excess of his weekly benefit amount plus \$15.00 in the other weeks filed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated March 1, 2021 (reference 01) that denied benefits as of January 10, 2021 based on a finding claimant was unable to perform work due to illness is MODIFIED in favor of appellant. He is eligible for benefits as set forth below.

Iowa Code section 96.4(3) provides:

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

3. 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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, 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 Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "*totally unemployed*" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

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

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

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

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

The administrative law judge finds claimant was able and available for work but no work was available to him during the weeks ending January 16, February 13, and February 20, 2021. He is therefore temporarily unemployed and eligible for benefits in each of those weeks.

Claimant is not eligible for benefits in the weeks ending January 23, January 30, and February 6, 2021, as he was either employed full-time or earned wages in excess of his weekly benefit amount plus \$15.00.

Because claimant's unemployment was pandemic-related and the Department has determined not to charge employers for such periods of unemployment, employer will not be charged for benefits paid during those periods.

DECISION:

The decision dated March 1, 2021 (reference 01) that denied benefits as of January 10, 2021 based on a finding claimant was unable to perform work due to illness is MODIFIED in favor of appellant. He is eligible for benefits as set forth above.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 21, 2021
Decision Dated and Mailed

abd/ol

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.