

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L MOREDOCK
Claimant

APPEAL NO. 09A-UI-02423-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 06/21/09
Claimant: Respondent (5)**

Section 96.4-3 – Able to and Available for Work
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 11, 2010, reference 04, that concluded the claimant was on a short-term layoff. A telephone hearing was held on April 2, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Tim Spier participated in the hearing on behalf of the employer with a witness, Sheila McQuire. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the Agency determined on July 31, 2009, that the claimant was eligible for partial unemployment benefits and the employer was not chargeable for benefits because the claimant was working part-time the same hours and wages as in his contract of hire. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Was the claimant was eligible for partial unemployment insurance benefits effective December 20, 2009?

FINDINGS OF FACT:

The claimant worked full-time for Rion LLC until his employment ended in early 2008. He started working part-time about 15 to 20 hours per week for the employer on February 28, 2008, and still works part-time on the same basis. The claimant took a second part-time job working for United Parcel Service in August 2008.

The claimant filed a claim for unemployment insurance benefits effective June 21, 2009, due to having some week in which his wages were less than his weekly benefit amount. The Agency determined on July 31, 2009, that the claimant was eligible for partial unemployment benefits and the employer was not chargeable for benefits because the claimant was working part-time the same hours and wages as in his contract of hire.

The claimant filed an additional claim for unemployment insurance benefits with an effective date of December 20, 2009. His employment status with the employer had not changed. He has not restricted the hours or days that he is willing to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits effective December 20, 2009.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.19-38-b provides in part:

b. An individual shall be deemed partially unemployed in any week in which, 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.

The claimant is entitled to partial unemployment insurance benefits in any week in which his earnings were less than his weekly benefit amount plus \$15.00.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code section 96.4-3. The claimant was able to and available to work and did not restrict the number of hours he was willing to work.

The final issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code section 96.7-2-a(2) provides in part:

(2) The amount of regular benefits . . . paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual 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.

The employer's account is not subject to charge for benefits paid to the claimant, because the employer has provided the claimant with the same employment as provided during the base period.

DECISION:

The unemployment insurance decision dated February 11, 2010, reference 04, is modified with no change in the outcome. The claimant is qualified to receive partial unemployment insurance benefits, if he is otherwise eligible. The employer's account will not be subject to charge for benefit paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw