

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS WASHINGTON
Claimant

HYVEE INC
Employer

APPEAL 22A-UI-01339-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/07/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A(37) – Total, Partial, and Temporary Unemployment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

On December 14, 2021, claimant Thomas Washington filed an appeal from the December 9, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was still employed at the same hours and wages as contemplated in his contract of hire. The parties were properly notified of the hearing. A telephonic hearing was held at 9:00 a.m. on Monday, February 7, 2022. The claimant, Thomas Washington, participated personally. The employer, Hy-Vee, Inc., participated through witness Steven Almonroze, District HR Manager; and representative Jennifer Rice. Claimant's Exhibits A and B were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for in late January 2017. He has held multiple positions with the employer, including cashier, greeter, and demo employee. Claimant currently works for the employer at its store in downtown Des Moines.

Throughout his employment, claimant has been a part-time employee. As a general rule, the employer does not guarantee part-time employees certain schedules or set numbers of hours each week. The employee reserves guaranteed schedules and hours for its full-time employees.

In October 2021, claimant was working as a cashier at a south-side Des Moines location. On October 8, the employer held a consultation with claimant regarding errors in his checking duties. The employer was planning to take claimant off cashier duties temporarily, engage

claimant's case worker to provide additional training, and then return him to his cashier position. However, during this consultation, claimant announced that he did not want to be a cashier any longer. The employer decided to try and train claimant as a courtesy clerk. However, after one training shift on October 21, the employer determined this was not a good fit for him.

After that training shift, the employer offered claimant a greeter position at the downtown Des Moines store. This position would involve a significant drop in claimant's average hours. In his cashier position, claimant was averaging 24.5 hours per week. However, the downtown Des Moines store only had four hours of greeter work available for him each week. Claimant expressed frustration about the lack of work available, but he agreed to take the new position. Claimant began working as a greeter at the downtown Des Moines store on Saturday, November 6. Claimant has been consistently available for work since taking this position and opening his claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not partially unemployed and is not eligible for benefits.

Iowa Code § 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 § 96.1A(37) 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.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week he has claimed benefits. He is not totally unemployed.

The next question is whether the claimant is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). In this case, the claimant was hired into a part-time position. He has worked part-time hours during his entire employment. The evidence in the record establishes that the claimant had the opportunity to continue in the cashier position and work more hours, but he removed himself from that position and opted to become a greeter instead. While this is certainly claimant's option to do, he does not get to supplement his smaller paycheck with unemployment insurance benefits. The administrative law judge finds the claimant is not partially unemployed and is not eligible for benefits.

As the claimant is not partially unemployed and has not had any weeks of total unemployment, the issues of his availability for work and the chargeability of the employer's account are moot at this time.

DECISION:

The December 9, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was not totally or partially unemployed effective November 7, 2021. Benefits must be withheld.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 25, 2022
Decision Dated and Mailed

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