

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY S BOLDT**  
Claimant

**APPEAL NO: 11A-UI-07896-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 06/27/10**

**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available  
Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
871 IAC 23.43(4)(a) – Charges for Partial Unemployment Insurance Benefits

**STATEMENT OF THE CASE:**

Kimberly S. Boldt (claimant) appealed a representative's June 10, 2011 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 19, 2011. The claimant participated in the hearing. Alyce Rose Thatch of Corporate Cost Control appeared on the employer's behalf and presented testimony from one witness, Justin Anderson. One other witness, Dickie Williams, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant eligible for partial unemployment insurance benefits? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 21, 2004. She continues to work part time for the employer as a vending assistant; as of the date of the hearing she had last worked on July 18, 2011. Her schedule for about the past year has been to work 16 hours per week on Saturdays and Mondays. Her prior schedule was also about 16 hours per week, but on Saturdays and Sundays.

The claimant established an unemployment insurance benefit year effective June 27, 2010 due to the loss of her full-time employment with Lucas County on July 2, 2010. Her base period was therefore set as being the first quarter 2009 through the fourth quarter 2009. During her base period, she worked about 40 hours per week for Lucas County plus the 16 hours per week for the employer.

Her weekly benefit amount was calculated to be \$256.00. She began to file weekly claims and receiving partial unemployment insurance benefits after reporting the wages she earned with the employer.

Because there had been several weeks in April 2011 in which the claimant had filled in and worked additional hours for the employer, during those weeks the claimant had sufficient wages so that she had no remaining partial benefit eligibility. Because the claimant had received no benefits for several weeks, when the additional work with the employer was concluded and she sought to resume receiving partial benefits, the Agency required her to reopen her claim effective April 24, 2011. The representative's decision in this case concluded that as of that date the claimant was working in her now regular job under her same hours and wages and was therefore no longer partially unemployed but was fully employed.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is eligible for partial unemployment insurance benefits and whether the employer's account is subject to charge. The unemployment insurance law provides that a claimant is deemed partially unemployed if she has been permanently or temporarily separated from one employer and earns less than her weekly benefit amount plus \$15.00 in other employment.

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 Agency has interpreted these sections in defining a "week of unemployment" as "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138). The Agency, however, relied on 871 IAC 24.23(21) in denying benefits to the claimant.

871 IAC 24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In the present case, the claimant was working 40 or more hours per week during the base period for Lucas County plus the 16 hours per week for the employer. This establishes the claimant's "regular workweek" for determining whether she was partially unemployed under the statutes and rules during her current benefit year.<sup>1</sup> The claimant had weeks since filing her additional claim in which she worked less than the regular full-time hours she had been working for Lucas County and the employer during her base period, but in which she worked all available hours with the employer and in which she earned less than \$271.00 (\$256.00 + \$15.00).

The claimant was separated from her regular full-time employer and continued to work for her part-time base period employer. Consequently, the claimant continues to be qualified to receive at least partial unemployment insurance benefits effective April 24, 2011, provided she was otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting her wages from all employers earned (not paid) for that week; the amount of her eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code section 96.3-3.

The next 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.

Rule 871 IAC 23.43(4)a also provides that the employer is exempt from charge for benefits paid to the claimant as long as it continues to provide the claimant with the same part-time employment it provided during her base-period. The employer was and is providing the claimant with substantially the same employment as it provided during her base period. It is therefore exempt from charge in this benefit year.

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<sup>1</sup> Her "regular workweek" for any future benefit year would be measured against her base period employment as of the date of any new claim year.

**DECISION:**

The unemployment insurance decision dated June 10, 2011 (reference 04) is modified in favor of the claimant. The claimant is eligible for partial unemployment insurance benefits in her benefit year effective June 27, 2010, including since April 24, 2011, provided she is otherwise eligible, and the employer's account is exempt from charge for benefits paid to the claimant.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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