

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHANELLE T HALVERSON**  
Claimant

**APPEAL NO. 14A-UI-12898-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 11/23/14**  
**Claimant: Appellant (4)**

Iowa Code section 96.4(3) – Able & Available  
Iowa Code section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

Chanelle Halverson filed a timely appeal from the December 12, 2014, reference 02, decision that denied benefits effective December 7, 2014, based on an Agency conclusion that Ms. Halverson was unable to work due to pregnancy. After due notice was issued, a hearing was held on January 13, 2015. Ms. Halverson participated. Julia Day of Corporate Cost Control represented the employer and presented testimony through Stacey Aneweer, Human Resources Manager, and Ric Anderson, Store Director. The administrative law judge took official notice of the agency's administrative record of wages reported by or for the claimant and of the claimant's weekly claims reports to the Agency.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant has been partially unemployed since establishing her claim for benefits.

Whether the employer's account may be assessed for benefits paid to the claimant.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Chanelle Halverson began her part-time employment with the Marshalltown Hy-Vee store in August 2014 and continues as an employee. Ms. Halverson last performed work for the employer on December 30, 2014. At that time, Ms. Halverson commenced an approved leave of absence in connection with the planned caesarian section birth of her baby. Ms. Halverson gave birth on January 2, 2015 and has since been recovering from the medical procedure and has been spending time with her newborn. Ms. Halverson's doctor has not yet released her to return to work.

Ms. Halverson was hired by Hy-Vee to work as a clerk in the Chinese Express. Ms. Halverson was not guaranteed a particular number of hours as a part-time employee, but was told that she could expect to be scheduled for 20 to 30 hours per week. Ms. Halverson's wage was \$8 per hour. Between early September 2014 through the week that ended November 22, 2014, the employer scheduled Ms. Halverson to work between 20 and 30 hours per week. With the exception of brief period of illness during the week of October 19 through 25, 2014 Ms. Halverson worked the hours the employer had available for her.

The number of hours the employer had for Ms. Halverson dropped when the employer hired a new Chinese Express manager in November. During the week of November 23 the employer only had 17.3 hours for Ms. Halverson. During the week of November 30 the employer only had 12.2 hours for Ms. Halverson. During the week of December 7 the employer only had 11.1 hours for Ms. Halverson. For the remainder of December 2014 the employer had less than 10 hours per week for Ms. Halverson. Though Ms. Halverson had told the employer that she would prefer not to work on weekends, she had not declined any weekend hours that the employer had for her.

Ms. Halverson filed a claim for unemployment insurance benefits that was effective November 23, 2014 in response to the decrease in the number of work hours that Hy-Vee had available for her. Prior to working her most recent day on December 30, 2014 Ms. Halverson had not declined any hours the employer had available for her since she established her claim for unemployment insurance benefits.

Ms. Halverson's base period for purposes of the claim that was established during the fourth quarter of 2014 consists of the second and third quarters of 2013 and the first and second quarters of 2014. Ms. Halverson's base-period wage credits are based on a full-time employment with Lennox Industries. Hy-Vee is not a base-period employer for purposes of the claim that Ms. Halverson established in November 2014. Ms. Halverson's weekly benefit amount is set at \$321 and is based on the history of full-time employment with Lennox Industries. Ms. Halverson's weekly wages since she filed her claim for benefits have consistently been under \$100.

During the six-week period of November 23, 2014 through the week that ended January 3, 2015; Ms. Halverson made two employer contacts. On December 19, 2014 Ms. Halverson met with Hy-Vee Human Resources Manager Stacey Aneweer and they discussed Ms. Halverson commencing a leave of absence in connection with the expected caesarian birth of her baby. Ms. Halverson has not worked or looked for work since the birth of her child on January 2, 2015. At the time of the appeal hearing, Ms. Halverson and Hy-Vee each expected that Ms. Halverson would return to the part-time Hy-Vee employment after

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

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 Admin. Code r. 871-24.22(1)a, (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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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 Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

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. Iowa Code Section 96.19(38)(b).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment; Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

(1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended 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.

(a) 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5. [Emphasis added.]

The weight of the evidence in the record establishes that Ms. Halverson was able and available for work but partially unemployed during the six-week period of November 23, 2014 through the benefit week that ended January 3, 2015. During that period, Hy-Vee did not have the same number of hours that it had had for Ms. Halverson earlier in the employment. During that time, Ms. Halverson had continued to look for other employment. During that time, Ms. Halverson did not make anywhere near her \$321 weekly benefit amount. Ms. Halverson is eligible for benefits for the six-week period of November 23, 2014 through January 3, 2015, provided she is otherwise eligible.

The weight of the evidence indicates that Ms. Halverson has not been able to work and available for work within the meaning of the law since the benefit week that began January 4, 2015. Since that time, Ms. Halverson has been under the care of a physician and has not been released to return to work. Since that time, Ms. Halverson has been caring for her newborn and had not looked for work. Benefits are denied effective January 4, 2015; based on Ms. Halverson not meeting the work ability and work availability requirements.

Because Hy-Vee is not a base-period employer for purposes of the claim year that began for Ms. Halverson on November 23, 2014 and that will end for Ms. Halverson on November 21, 2015; Hy-Vee is not liable for benefits paid to Ms. Halverson during that period. See Iowa Code Section 96.7(2). Hy-Vee's account has not and will not be charged for benefits paid to Ms. Halverson during her current benefit year.

**DECISION:**

The December 12, 2014, reference 02, is modified in favor of the claimant as follows. During the six-week period of November 23, 2014 through the benefit week that ended January 3, 2015; the claimant was able and available for work but partially unemployed. The claimant is eligible for benefits for that period, provided she is otherwise eligible. Effective the benefit week that started January 4, 2015 the claimant was no longer able and available work, was not engaged in an active and earnest search for new employment and, therefore, was not eligible for benefits. Benefits are denied effective January 4, 2015.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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