

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM A RUNGE
Claimant

APPEAL NO. 11A-UI-06620-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02/06/11
Claimant: Appellant (1)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

William A. Runge filed a timely appeal from an unemployment insurance decision dated May 17, 2011, reference 04, that denied benefits to him upon a finding that he could not be considered to be an unemployed individual. After due notice was issued, a telephone hearing was held June 22, 2011, with Mr. Runge participating. Judy Berry appeared on behalf of the employer, Hy-Vee, Inc. Bakery Manager Richard Simmons testified. The administrative law judge takes official notice of Agency benefit payment records and wage records. This case is considered on a consolidated record with appeals 11A-UI-07033-AT, 11A-UI-07034-AT and 11A-UI-07035-AT.

ISSUE:

Is the claimant an unemployed individual who is eligible to receive unemployment insurance benefits?

FINDINGS OF FACT:

William A. Runge last worked in full-time employment in the first calendar quarter of 2009. He filed a claim for unemployment insurance benefits in December of 2008 and reopened the claim in January 2009, following his final layoff by The Gates Company. His weekly benefit amount was \$375.00. During that benefit year, he received \$9,750.00 in state unemployment insurance benefits and \$6,905.00 in emergency unemployment compensation.

In the second quarter of 2009, Mr. Runge began working part-time for Godfather's Pizza. He continues working a few nights per week in that part-time employment. In the third quarter of 2009, he began part-time employment with Hy-Vee, Inc. He was hired to work 12 to 16 hours per week and has in fact worked between 16 and 30 hours per week since he was hired. His hours were lower in the fourth quarter of 2010 and the first quarter of 2011 because of hip surgery.

Mr. Runge opened a new benefit year on December 6, 2009, with a weekly benefit amount of \$344.00. His unemployment insurance benefits were still based on his previous full-time employment with The Gates Company. During this benefit year, he received state

unemployment insurance benefits in the amount of \$5,591.84 and emergency unemployment compensation benefits in the amount of \$3,607.00.

Mr. Runge is monetarily eligible for state unemployment insurance benefits as of February 6, 2011. These benefits are based solely on his wages from part-time employment with Hy-Vee and Godfather's, not on his former full-time employment. His weekly benefit amount is \$150.00. Pursuant to federal statute, he continued receiving emergency unemployment compensation at the higher weekly benefit amount rather than state benefits at his new weekly benefit amount based on his current base period wages. He received benefits totaling \$1,756.00 for the eleven weeks ending May 17, 2011. He continues to seek full-time employment.

Three months after allowing benefits to continue, the Agency issued a series of decisions, including the one at issue in the present case, denying regular and emergency benefits to Mr. Runge and seeking repayment of \$1,756.00.

REASONING AND CONCLUSIONS OF LAW:

At the outset, the administrative law judge notes that he has no equitable powers. It is not for him to decide whether it was appropriate or fair for the Agency to allow benefits to be paid from February into May before reconsidering its prior allowance. His jurisdiction is limited to determining whether the decision denying benefits is accurate.

The first eligibility requirement for receiving unemployment insurance benefits is that an individual be unemployed through no fault of his or her own. See Iowa Code section 96.4-3. An individual may be either totally unemployed or partially unemployed. See Iowa Code section 96.19-38. A partially unemployed individual is one who is working fewer than his or her regular number of hours while earning less than the sum of his or her weekly benefit amount plus fifteen dollars.

There is no question that at one time in his career Mr. Runge was a full-time employee. His unemployment insurance benefits for benefit years beginning in December 2008 and 2009 were based on full-time wages. His present benefit year, however, is based on his part-time employment with Godfather's and Hy-Vee. An individual who is employed in his or her part-time job under the same conditions as when hired is not considered to be unemployed. See 871 IAC 24.23(26). Mr. Runge's present unemployment benefits are based on all wages paid to him from October 1, 2009, through September 30, 2010. During this time, Mr. Runge has been a part-time employee. The only reduction in hours has been due to his hospitalization and recuperation.

The rule cited above does not specifically address the situation of an individual who previously was a full-time employee but now works part-time hours while continuing to seek full-time employment. The basic question presented in this case is whether a person such as Mr. Runge who is in this situation can still be considered partially unemployed. Based on the testimony of the witnesses and agency wage records, the administrative law judge concludes that Mr. Runge has been employed exclusively in part-time employment for two years and has established a claim for unemployment insurance based on part-time, rather than full-time, employment. Since his part-time employers have not reduced his hours, the claimant does not meet the definition of being an unemployed individual as of the beginning of his present benefit year. Benefits are withheld.

DECISION:

The unemployment insurance decision dated May 17, 2011, reference 04, is affirmed. The claimant is not entitled to receive unemployment insurance benefits effective February 6, 2011.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw