

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARISSA F MARTIN
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-13738-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.1(A)37 – Total, Partial, Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 1, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was still employed at the same hours and same wages as her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on August 13, 2021. The claimant participated personally. The employer participated through witness June Froehle and was represented by Larry Lampel. Administrative Law Judge Hamilton observed. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on March 26, 2020. She remains employed to date. She works part-time as an online shopper. Claimant was hired as a part-time employee and was never guaranteed a certain number of hours per week. Her hours vary based upon business needs of the employer and availability of the claimant. The claimant has availability to work for this employer for six hour shifts on Monday, Tuesday and Wednesday each week. Claimant has another part-time job for another employer.

Claimant's last day physically worked on the job was May 31, 2021. Claimant requested three days off in June of 2021 and three days off in July of 2021. There was a miscommunication between the employer and claimant on whether the claimant was still available for work. Neither party reached out to the other party to communicate whether the claimant was able to work and whether work was available for her.

Claimant filed an initial claim for benefits effective March 14, 2021. She has filed weekly-continued claims for benefits from March 14, 2021 through May 22, 2021. Claimant has worked and earned insured wages for each weekly-continued claim that she has filed. Claimant's base period wages establish that she has always been a part-time employee with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

Required Findings.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 as follows:

Definitions. As used in this chapter, unless the context clearly requires otherwise:

37. "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 Code § 96.7(2)a(2)a provides:

Contribution rates based on benefit experience.

a. (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.

Iowa Admin. Code r. 871-24.23(26) provides:

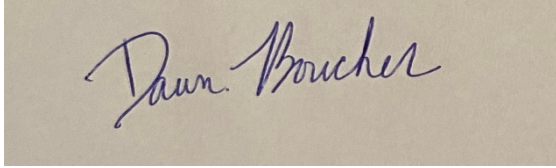
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

Because claimant was hired to work only part-time hours, was not guaranteed full-time hours, and the wage history consists of only part-time wages, the claimant is not considered to be unemployed within the meaning of the law. When an individual is hired to work part-time, the implied agreement is that full-time work will not be regularly available. Thus, since the employer continues to provide the same employment and the claimant is currently employed under the same hours and wages as contemplated when she was hired, she is not considered partially unemployed. Benefits are denied effective March 14, 2021. Because benefits are denied, no charges shall accrue to the employer's account.

DECISION:

The June 1, 2021 (reference 01) decision is affirmed. Claimant is not totally, partially, or temporarily unemployed as she is still employed in her part-time job for the same hours and wages as her original contract of hire. Benefits are denied effective March 14, 2021.



Dawn Boucher
Administrative Law Judge

August 18, 2021
Decision Dated and Mailed

db/kmj