

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELSEY M OCENOSAK
Claimant

APPEAL NO. 20A-UI-08024-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/19/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment

STATEMENT OF THE CASE:

Kelsey Ocenosak filed a timely appeal from the July 2, 2020, reference 01, decision that denied benefits effective April 19, 2020, based on the deputy's conclusion that she was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on August 19, 2020. Ms. Ocenosak participated. Frankie Patterson of Corporate Cost Control represented the employer and presented testimony through Linda Pochabradsky. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of April 19, 2020 through July 4, 2020.

Whether the claimant was partially unemployed during the period of April 19, 2020 through July 4, 2020.

Whether the employer's account may be charged for benefits paid to the claimant during the period of April 19, 2020 through July 4, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: the claimant began employment with Hy-Vee, Inc. on April 1, 2020. Shortly before the claimant started her employment at Hy-Vee, she was temporarily laid off from a part-time Job Coach position at Goodwill of the Heartland. Claimant has another part-time employment at Torrid, a clothing store. Claimant's hourly wage at Hy-Vee has \$12.00 per hour. Hy-Vee hired the claimant to work in the employer's Aisles Online department. Though the claimant was hired for part-time work, the claimant worked full-time plus overtime hours during the weeks that ended April 12 in April 19, 2020. The claimant's weekly work hours thereafter settled into part-time work hours, ranging between 19.7 and 32.4 hours per week through the end of May 2020. At the start of June 2020, the employer moved the claimant from the Aisles Online department to a part-time checker position, after determining the claimant was not a good fit with the fast-paced Aisles Online work. The week that ended June 6, 2020 was a transition week during which the

employer only had 7.1 hours of work available. The claimant's part-time work hours rebounded the following week. The claimant thereafter commenced or recommenced work for one or both of her two other part-time employers and voluntarily reduced her work schedule at Hy-Vee to two days a week. Prior to commencing or re-commencing her other part-time employment, the claimant made herself available for all the hours Hy-Vee had for her.

The claimant established an original claim for benefits that was effective April 19, 2020. Hy-Vee is not a base period employer for purposes of the claim year that started for the claimant on April 19, 2020 and which will end for the claimant on or about April 18, 2021. Iowa Workforce Development set the claimant's weekly benefit amount at \$197.00. The claimant made weekly claims for consecutive weeks between April 19, 2020 and July 4, 2020. For all weeks except the week ending June 6, 2020, the claimant reported wages that exceeded her weekly unemployment insurance benefit amount plus \$15.00 and did not receive unemployment insurance benefits. For the week that ended June 6, 2020, the claimant reported \$135.00 in wages and received \$111.00 in regular benefits plus \$600.00 in Federal Pandemic Unemployment Compensation benefits. The claimant discontinued her claim after the week that ended July 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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(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.

(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 Code section 96.19(38) 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.

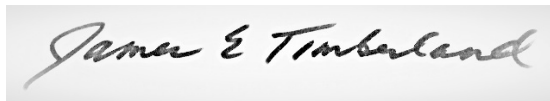
c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The evidence in the record establishes that the claimant was able to work and available for work during the period of April 19, 2020 through July 4, 2020. During the week that ended June 6, 2020, the claimant remained available for work, but Hy-Vee did not have the same amount of work that the employer had provided up to that point. The claimant's wages for that week were less than her weekly benefit amount plus \$15.00. Accordingly, the claimant was partially unemployed within the meaning of the law during the week that ended June 6, 2020 and is eligible for benefits for that week, provided she meets all other eligibility requirements. The claimant was not partially unemployed within the meaning of the law during any of the other weeks between April 19, 2020 and June 4, 2020 because her reported wages exceeded her weekly benefit amount plus \$15.00. The claimant is not eligible for benefits for the period of April 19, 2020 through May 30, 2020 or during the period of June 7, 2020 through July 4, 2020.

Hy-Vee is not a base period employer for purposes of the claim year that began for the claimant on April 19, 2020 and, therefore, is not subject to be charged for benefits during the current claim year. See Iowa Code Section 96.7(2) (regarding base period employer liability).

DECISION:

The July 2, 2020, reference 01, decision is modified in favor of the claimant as follows. The claimant was able to work and available for work during the period of April 19, 2020 through July 4, 2020. The claimant was partially unemployed during the week that ended June 6, 2020 and is eligible for benefits for that week, provided she meets all other eligibility requirements. The claimant was not partially unemployed during the period of April 19, 2020 through May 30, 2020 or during the period of June 7, 2020 through July 4, 2020 and is not eligible for benefits during those weeks. The employer's account will not be charged for benefits paid to the claimant for the week that ended June 6, 2020.



James E. Timberland
Administrative Law Judge

August 24, 2020
Decision Dated and Mailed

jet/scn