

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLEN D WALKER
Claimant

HY-VEE INC
Employer

APPEAL 19A-UI-04439-LJ

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/05/19
Claimant: Appellant (1)

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On May 30, 2019, the claimant filed an appeal from the May 24, 2019, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not partially unemployed and therefore was not eligible for benefits. The parties were properly notified of the hearing. An in-person hearing was held in Cedar Rapids, Iowa, on Thursday, July 11, 2019. The claimant, Allen D. Walker, participated. The employer, Hy-Vee, Inc., participated through Matt Harlow, Human Resources Manager; and Trenton Kilpatrick of Corporate Cost Control, Inc., represented the employer. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Hy-Vee on May 26, 2015. Since mid-June 2016, claimant has worked six hours each week as a backroom clerk.

Claimant has filed for unemployment insurance benefits for the last several years. Most recently, claimant opened a claim for benefits effective May 5, 2019. Claimant's base period consists of the four quarters of 2018.

Claimant's wage record shows he has worked for multiple employers during his base period: Hy-Vee, Inc.; Nordstrom, Inc.; Key Resources, Inc.; and P. J. Iowa, L.C. Claimant worked for Nordstrom, Inc., as a full-time seasonal employee. He typically works from late November through mid-January and again from June through July. Claimant earns \$15.60 per hour in this position. Claimant worked as a part-time employee for Key Resources, Inc., and for P. J. Iowa, L.C.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not unemployed. Therefore, benefits are withheld.

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"...

Iowa Code § 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.

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages for each week he has claimed benefits. Therefore, claimant is not totally unemployed.

The next question is whether claimant is partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* Here, claimant does not meet the requirements to receive partial unemployment benefits. Claimant's wage records show that he does not have full-time, regular employment averaging 32 hours per week in his base period. Rather, claimant's base period wages are made up of temporary full-time positions lasting no more than several weeks or part-time positions. While Nordstrom is claimant's most regular employer, his base period shows he has not worked for the company full-time for any quarter. Claimant's employment with Hy-Vee cannot be considered supplemental employment because he is not supplementing any full-time, regular work.

Regarding Hy-Vee, claimant has worked six hours per week for the store for the past three years. Certainly, claimant is working for Hy-Vee on the same basis as contemplated in his contract for hire (renegotiated in June 2016). Therefore, under Iowa Administrative Code rule 871—24.23(26), claimant cannot be considered partially unemployed and cannot be eligible for partial unemployment benefits.

The administrative law judge finds that claimant is neither totally nor partially unemployed. Therefore, benefits are withheld.

DECISION:

The May 24, 2019, (reference 02) unemployment insurance decision is affirmed. Claimant is neither totally nor partially unemployed. Therefore, he is not eligible for unemployment insurance benefits.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/rvs