

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOY WITTE
Claimant

APPEAL NO: 13A-UI-12400-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/06/13
Claimant: Appellant (4)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Joy Witte (claimant) appealed an unemployment insurance decision dated October 16, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was still employed with Hy-Vee, Inc. (employer) at the same hours and wages as in her original contract of hire. Due notice was issued scheduling the matter for a telephone hearing to be held November 27, 2013. Because a decision fully favorable to the parties could be made based on the administrative record, a hearing was deemed unnecessary.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in her original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant works part time for this employer with no change in the contract of hire. She does not want to draw benefits from the employer herein. The claimant separated from Fun Wash Laundry and is filing for benefits based on that separation. Fun Wash Laundry was sent notice but did not protest the claimant's unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire. The claimant was hired part time and continues to be employed in that same capacity, with no change in hours or wages.

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. 871 IAC 24.23(26).

Under the provisions of Iowa Code § 96.7-2-a(2), if the claimant is receiving the same employment from the employer as during the base period, benefits paid to the individual shall not be charged against the account of the employer. The employer's account is not subject to charge but the claimant remains qualified for unemployment insurance benefits, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated October 16, 2013, reference 01, is modified in favor of the appellant. The employer's account is relieved of charges and the claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css