

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GINA M ROESGER

Claimant

APPEAL 20A-UI-04207-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC

Employer

OC: 03/15/20

Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 12, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits due to her not being able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on June 5, 2020. The claimant, Gina M. Roesger, participated personally. The employer, Hy-Vee Inc., did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total or partial 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?
Is the claimant overpaid benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer in 2015. Claimant works part-time as a cashier at the employer's grocery store. She typically works two days per week and that has been her schedule since she started working for this employer. She is still employed to date.

The claimant filed her original claim for unemployment insurance benefits effective March 15, 2020 after being laid off from her regular employer, Isle of Capri Bettendorf, due to the closure of the casino during the COVID 19 pandemic. Her weekly-benefit amount is \$220.00. Claimant has been able to and available for work for her regular full-time employer if work would have been available to her.

The claimant also works for this employer, part-time, under the same terms and conditions as contemplated at hire. Claimant has earned wages each week that she has filed weekly-continued claims for benefits since filing her claim effective March 15, 2020 but she failed to report those wages earned each week when she was filing her weekly-continued claims for benefits. She spoke to a representative with Iowa Workforce Development to report wages earned for the weeks she misreported; however, her current administrative records do not establish that wages earned have been updated.

Claimant's administrative records establish that she has received unemployment insurance benefits of \$1,540.00 from March 15, 2020 through May 2, 2020. Claimant has also received Federal Pandemic Unemployment Compensation benefits of \$3,000.00 from March 29, 2020 through May 2, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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", subparagraph (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 Code § 96.19(38)b provides:

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

38. "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.

(emphasis added).

Iowa Admin. Code r. 871-23.43(4)a provides, in part:

Charging of benefits to employer accounts.

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relived of benefit charges

The claimant was laid off from her regular employer and earned wages from the part-time employer. So long as those wages are less than her weekly benefit amount, plus fifteen dollars, claimant may be eligible for partial benefits. Because claimant has other base period wages and is currently employed part-time, she may be considered partially unemployed. Partial benefits may be allowed if she is otherwise eligible. Inasmuch as the current part-time employer is offering the same wages and hours as in the base period contemplated at hire, no benefit charges shall be made to its account.

Benefits are allowed, subject to the claimant's proper reporting of wages earned each week, and provided the claimant is otherwise eligible. For each week claimed, the claimant must report gross earnings during each week claimed to establish whether or not she is eligible for partial unemployment benefits.

DECISION:

The May 12, 2020 (reference 01) decision is modified in favor of the appellant. Claimant is partially unemployed and benefits are allowed, provided the claimant is otherwise eligible. The account of the current employer (Hy-Vee Inc., account number 006858) shall not be charged. The claimant must report gross wages earned for weeks in which she is filing weekly-continued claims for partial unemployment benefits.

REMAND:

The matter of the claimant's failure to report wages earned for the weeks between March 15, 2020 and May 16, 2020 is remanded to the Benefits Bureau for an initial investigation and determination. The chargeability issue of whether charges are made against the Isle of Capri Bettendorf due to the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination of the allocation of charges.

Dawn Boucher
Administrative Law Judge

June 22, 2020
Decision Dated and Mailed

db/scn