

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRENDAN S GINTY**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 17A-UI-08444-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/23/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.19(38)b – Partial Unemployment  
Iowa Admin. Code r. 871-24.23(26) – Part time, same hours and wages

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the August 15, 2017 (reference 01) unemployment insurance decision that found claimant was not eligible for partial unemployment benefits because he was still employed for the same hours and wages as in his original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on September 6, 2017. The claimant, Brendan S. Ginty, participated personally. The employer, Hy-Vee Inc., participated through hearing representative Keith Mokler and witness Bill Detweiler. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents and claimant's wage history.

**ISSUES:**

Is the claimant able to work and available for work effective July 23, 2017?  
Is claimant employed for the same hours and wages?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed part-time for this employer beginning May 27, 2016 and remains employed to date. Claimant is a deli clerk and he works approximately 8 – 16 hours per week unless, he had extended breaks from school. Claimant's hourly rate of pay is \$9.25. Claimant was not guaranteed any certain number of hours per week when he was hired by the employer as a part-time employee.

**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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. *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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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.

The claimant is still employed in his part-time job at the same hours and wages as contemplated in his original contract of hire. Further, since claimant does not have full-time base-period wages and the level of employment is consistent with the base-period wage history with this employer, he may not be considered partially unemployed. As such, benefits are denied.

**DECISION:**

The August 15, 2017 (reference 01) decision is affirmed. Claimant is still employed in his part-time job at the same hours and same wages as in his original contract of hire and is therefore not partially unemployed as of July 23, 2017. Benefits are denied.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs