

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN E WILSON
Claimant

APPEAL NO. 09A-UI-12247-DT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

HY-VEE INC
Employer

**Original Claim: 07/19/09
Claimant: Respondent (5)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's August 20, 2009 decision (reference 01) that concluded Kevin E. Wilson (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2009. The claimant participated in the hearing. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from one witness, Bill Stevens. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

This Nunc Pro Tunc decision is being issued to delete extraneous language in the Decision paragraph which was inadvertently included in the initial decision issued on October 14, 2009. Specifically, the final two sentences are deleted, which had stated, "Benefits are denied as of June 21 until and unless he restores his work availability with the employer. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment." This language was in conflict with the language in the Reasoning and Conclusions of Law that "Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of his claim effective July 19, 2009, provided he was otherwise eligible. . . . The claimant remains available for work on the same basis as when he was previously working full-time and earning the wage credits on which his unemployment insurance benefits are based." Therefore, there would not be any period for which the claimant was ineligible for benefit and overpaid. The incorrectly included language was a carryover from language used in a similar case where that language properly applied. Amendment of the decision to remove the language has become necessary due to misinterpretation and misapplication of the incorrectly included language.

To further clarify the alteration to the initial decision, the disposition of the appeal is also changed from a modification "in favor of the employer" to a modification "with no effect on the parties."

ISSUE:

Is the claimant employed by the employer for less than his usual hours and wages even though he remains able and available for work, and is he therefore eligible for full or partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on August 9, 2006. From July 14, 2008 until June 28, 2009, he had worked full-time (40 hours per week) as a night stocker at the employer's Burlington, Iowa store, but as of June 28, 2009 the employer reduced him to part-time status due to the claimant using the "f-word" within hearing of a customer on the night of June 27. After June 28, the employer was scheduling the claimant from between two or three days per week. The claimant remains available for his prior full time hours.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed eligible for partial unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code § 96.19-38-b.

Beginning on or about June 28, 2009, the employer was not providing the claimant with substantially the same employment as it provided during his base period. Whether the employer had a good business reason for reducing the claimant's hours or even whether the reason might have been misconduct is not a consideration for eligibility where there has been a reduction of hours but not a separation. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of his claim effective July 19, 2009, provided he was otherwise eligible.

The claimant remains available for work on the same basis as when he was previously working full-time and earning the wage credits on which his unemployment insurance benefits are based. Iowa Code § 96.4-3; 871 IAC 24.22(2)(a).

DECISION:

The unemployment insurance decision dated August 20, 2009 (reference 01) is modified with no effect on the parties. The claimant is eligible for partial unemployment insurance benefits based on his reduction of hours from the employer, but only for periods he is available for work on the same basis as when he was working full-time.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw/kjw