

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R BERGELL
Claimant

APPEAL NO. 11A-UI-11609-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/10/11
Claimant: Respondent (1/R)

Section 96.4(3) – Availability for Work
871 IAC 24.23(26) – Eligible When Still Working Part-Time

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 25, 2011 determination (reference 01) that held the claimant eligible to receive partial benefits because he was working reduced hours. The claimant participated the hearing. John Fiorelli represented the employer. Tammy Staub, the store manager, and Rosemary Chapman, the floral manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, and the employer's quarterly wage reports for the claimant, the administrative law judge finds the claimant eligible to partial benefits because he works a reduced workweek.

ISSUES:

Is the claimant eligible to receive partial benefits because he is working a reduced work week?

Has the claimant restricted the hours he is available to work?

FINDINGS OF FACT:

The claimant started working for the employer in January 2008. After the claimant received a work-related injury that left him with permanent work restrictions, the employer told him in June 2010 he would be working part-time instead of full-time. The claimant started working part time in June 2010.

As of June 2010, the claimant started delivering floral arrangements. This job allowed the employer to accommodate the claimant's work restrictions. In 2010, the claimant worked an average of 16 hours a week. (Based on wages the employer provided to the Department with submitting quarterly tax reports.)

In 2011, Chapman started doing the scheduling. She understood the claimant did not want to work afternoons or Saturdays. Starting in 2011, the claimant worked an average of 9 to 13.5 hours a week.

There have been weeks the claimant has not worked all the hours he was scheduled to work. The claimant established a claim for partial benefits during the week of July 10, 2011. His maximum weekly benefit amount is \$280.

REASONING AND CONCLUSIONS OF LAW:

When a claimant is still employed in a part-time job at the same hour and wages that he was hired to work and is not working a reduced workweek, the claimant is not partially unemployed and is not eligible to receive benefits. 871 IAC 24.23(26).

In June 2010, the employer only employed the claimant as a part-time employee because of his permanent work restrictions. Based on the wages the employer reported in 2010, the claimant worked an average of 16 hours a week. In 2011, the claimant typically worked less than 16 hours a week. The evidence indicates that in 2011 the claimant worked 9 to 13.5 hours a week. As of July 10, 2011, the claimant works and has been scheduled fewer hours than what he had been working and was scheduled to work in 2010. Therefore, the claimant is partially unemployed and is eligible to receive partial benefits.

The employer asserted the claimant does not work all the hours he has been scheduled to work. Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). The employer was not prepared at the hearing to address each week the claimant has filed a weekly claim since July 10, 2011. The employer's general allegation that he did not always work all the hours he could have does not establish the claimant was not eligible to receive benefits during a certain week or weeks. Even though the employer asserted the claimant could be working 30 hours a week, the employer did not schedule him to work 30 hours and he was told in June 2010 he would only work 15 to 20 hours a week.

If the claimant restricted his availability to work a majority of a week, he may not be eligible to receive benefits that week. Since the employer raised the issue of whether the claimant has made himself unavailable for work, this issue will be remanded to the Claims Section to determine. Since July 10, 2011, the employer must provide the Claims Section information about what hours the claimant was scheduled to work each week that is in question and the hours he did not work that he was scheduled to work. If the employer has information why the claimant did not work specific hours, the employer should provide that information to the Claims Section also.

Any week the claimant earns gross wages of more than \$295, he is not eligible to receive partial unemployment insurance benefits, because he has earned excessive wages.

NOTE – The administrative law judge took official notice of the wages the employer reported and are reflected in the claimant's base period.

DECISION:

The representative's August 25, 2011 determination (reference 01) is affirmed. The claimant continues to work part-time, but he works reduced work weeks. Therefore, he is eligible to receive partial unemployment for any week he earns gross wages of less than \$295. An issue of whether the claimant has restricted his availability to the extent he may not be eligible to receive benefits is **Remanded** to the Clams Section to determine. If the employer wants the Claims Section to determine this issue, the employer must provide the information indicated above

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw