

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEREK L HOFFMAN**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 22A-UI-06194-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/04/20  
Claimant: Appellant (1)**

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Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Code § 96.19(38) – Total, partial, temporary unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

**STATEMENT OF THE CASE:**

On March 11, 2022, Derek Hoffman (claimant/appellant) filed a timely appeal from the Iowa Workforce Development (“IWD”) decision dated March 2, 2022 (reference 02) that denied unemployment insurance benefits as of October 4, 2020 based on a finding claimant was still employed for same hours and wages as in the original contract of hire and could not be considered partially unemployed.

A telephone hearing was set for April 21, 2022. Claimant requested the hearing be rescheduled. The request was granted and the hearing rescheduled for May 10, 2022. A telephone hearing was held at that time. The parties were properly notified of the hearing. Claimant participated personally. Hy-Vee Inc (employer/respondent) participated by HR Manager Kelly Nieland and was represented by Hearing Rep. Barbara Buss. No exhibits were offered or admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Is the claimant still employed at the same hours and wages?
- II. Is the claimant totally, partially, or temporarily unemployed?
- III. Is the claimant able to and available for work?
- IV. Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on September 10, 2019. He was initially employed as a part-time stocker. He moved to a part-time aisles online shopper position in March 2020. There was no guarantee of hours in either of these positions. However, he often worked around 40 hours per week in the aisles online shopper position because of increased demand caused by the pandemic.

Claimant filed an original claim for benefits with an effective date of October 4, 2020. He filed weekly continued claims in the weeks ending October 10 and 17, 2020. He worked 13.68 hours in the week ending October 10 and 16.97 in the week ending October 17, 2020. He earned less than his weekly benefit amount plus \$15.00 in each of these weeks.

Employer scheduled claimant for fewer hours in the weeks ending October 10 and 17, 2021 because employer determined claimant was working too many hours and employer did not wish for him to be classified as a full-time employee for purposes of the Patient Protection and Affordable Care Act.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the decision dated March 2, 2022 (reference 02) that denied unemployment insurance benefits as of October 4, 2020 based on a finding claimant was still employed for same hours and wages as in the original contract of hire and could not be considered partially unemployed is AFFIRMED.

Iowa Code section 96.4 provides in relevant part:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 section 96.1A(37) (formerly 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 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.

Iowa Code section 96.7(2)a(2) 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.

The administrative law judge finds claimant was still employed in a part-time job at the same hours and wages as contemplated in the original contract of hire during the weeks in question and was therefore not partially unemployed in those weeks. Claimant was hired for a part-time position with no guarantee of hours and he remained employed in that position during the weeks filed. While substantially more hours were available to him for approximately six months due to increased demand caused by the pandemic, this did not alter the contract of hire or the nature of the part-time position. As such benefits must be denied during the weeks filed and employer's account is not subject to charge.

**DECISION:**

The decision dated March 2, 2022 (reference 02) that denied unemployment insurance benefits as of October 4, 2020 based on a finding claimant was still employed for same hours and wages as in the original contract of hire and could not be considered partially unemployed is AFFIRMED.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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May 11, 2022  
Decision Dated and Mailed

abd/abd