

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NANETTE A FEULING
Claimant

HY-VEE INC
Employer

APPEAL 19A-UI-09723-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/21/19
Claimant: Appellant (1)

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 December 2, 2019 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits effective November 10, 2019 because she was still employed for the same hours and wages as in her original contract of hire. The parties were properly notified of the hearing. A telephone hearing was held on January 17, 2020. The claimant, Nanette A. Feuling, participated personally. The employer, Hy-Vee Inc., participated through hearing representative Trenton Kilpatrick and witness Steve Jeffrey. Paula Johnson and Ryan Parker observed on behalf of the employer. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the fact-finding documents and claimant's wage history.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed effective November 10, 2019?
Is the claimant able to work and available for work effective November 10, 2019?
Is claimant employed for the same hours and wages as in her original contract of hire?
Is the employer's account subject to charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed her original claim for unemployment insurance benefits with an effective date of April 21, 2019. Her base period includes the first quarter of 2018 through the fourth quarter of 2018. She filed her original claim after permanently separating from employment with Kwik Trip Inc. She worked for Kwik Trip Inc. as a part-time employee and earned only part-time wages from January 1, 2018 through December 31, 2018. Her part-time employment with Kwik Trip Inc. is the only employment the claimant had during her base period. This employer is not in the claimant's base period.

Claimant started working for this employer on June 21, 2019. She began working as a part-time employee and continues to work as a part-time employee to date. Her hours vary each week.

Claimant was never guaranteed a certain number of hours per week when she was hired to work part-time. Claimant's job title is courtesy clerk and her current hourly rate of pay is \$10.00.

Since filing her original claim for unemployment insurance benefits, she has been looking for both full-time and part-time work. Claimant has made at least two employer job contacts each week she has filed her weekly-continued claims for benefits. Claimant has reported her wages earned during each week she has filed her weekly-continued claims for benefits. Claimant has not earned any holiday pay, vacation pay or pension pay during the weeks she has filed her weekly-continued claims for benefits.

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.

(emphasis added).

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.

Under Iowa Employment Security Law, an individual must be totally or partially unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment is when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant has performed services and earned wages during the weeks ending November 16, 23, and 30, 2019. As such, she was not totally unemployed.

The next question is whether she was partially unemployed during that time. In order to be partially unemployed, an individual must work less than the regular full-time week while employed at the individual's then regular job (while earning less than their weekly benefit amount plus fifteen dollars); or, having been separated from the individual's regular job, earns at odd jobs less than their weekly benefit amount plus fifteen dollars. *Id.* If an individual is employed in a part-time job working the same hours and wages as contemplated in the original contract for hire, she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26).

The claimant has worked only part-time hours during her entire employment. There was no guarantee of a certain number of hours each week when the claimant was hired. As such, she is not partially unemployed. Benefits are denied effective November 10, 2019. The issue of chargeability is moot because this employer is not within the claimant's base period.

DECISION:

The December 2, 2019 (reference 02) decision is affirmed. Claimant is still employed in her part-time job at the same hours and same wages as in her original contract of hire and is therefore not partial unemployed. Benefits are denied effective November 10, 2019.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn